



MUNICIPAL DISTRICT OF RANCHLAND NO. 66

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August 19, 2021

Alberta Coal Policy Committee

(Submitted Via, Email energy.coalpolicy@gov.ab.ca.)

Dear Chairman and Committee Members

Re: Municipal District of Ranchland No. 66 ("Ranchland")

Submission to the Coal Policy Committee (CPC) of the Government of Alberta (GOA)

EXECUTIVE SUMMARY

The coal debate began in Ranchland. It is here that the most controversial coal developments were proceeding, therefore there is good reason that Ranchland is at the heart of this issue.

Our intention is to address two broad topics:

1) how should coal development be regulated in Alberta and
2) what should a new coal policy include? Those topics will be discussed in the following headings:

1. Involving Municipalities in Green Zone Coal Development proposal decisions;
2. Requiring the Alberta Energy Regulator (the "AER") to broaden the scope of their environmental considerations;
3. Prohibiting coal development in the South Saskatchewan River Basin;
4. Removing politics from coal development and the AER;
5. Requiring notice for new approval applications;
6. Accessing regions already subject to coal development;
7. Requiring bonds for exploration approvals; and
8. Taxing coal.

The submission represents the opinions of the Council of the Municipal District of Ranchland No.66 and its residents. They are provided to the Coal Policy Committee so that it can assist the GOA with developing "a twenty-first century natural resource

development policy”¹. Each of these topics are logical and are supported by science and history. It is our hope that the CPC and the Minister of Energy will take them seriously as creditability of a process, is paramount to gaining the trust of Albertans, failure will only feed the atmosphere of skepticism of the AER and any regulatory processes the GOA puts in place.

Yours Truly

Council of the Municipal District of Ranchland No. 66

¹ Terms of Reference.

Council of the Municipal District of Ranchland No. 66

Submission to the Albert Coal Policy Committee

August 19, 2021

Introduction

The coal debate began in Ranchland. It is here that the most controversial coal developments were proceeding.

It is with good reason that Ranchland became the heart of this issue.



Ranchland is marked by unparalleled beauty which has sustained ranchers for over 100 years. It is a pristine and largely undeveloped corner of our province. Ranchland is also the playground for a large population of Albertans seeking recreation activities from the urban areas of Calgary and Southern Albertans. The oil and gas industry are also a significant player in Ranchland along with hydro transmission and pipelines that support the provincial and national economy.

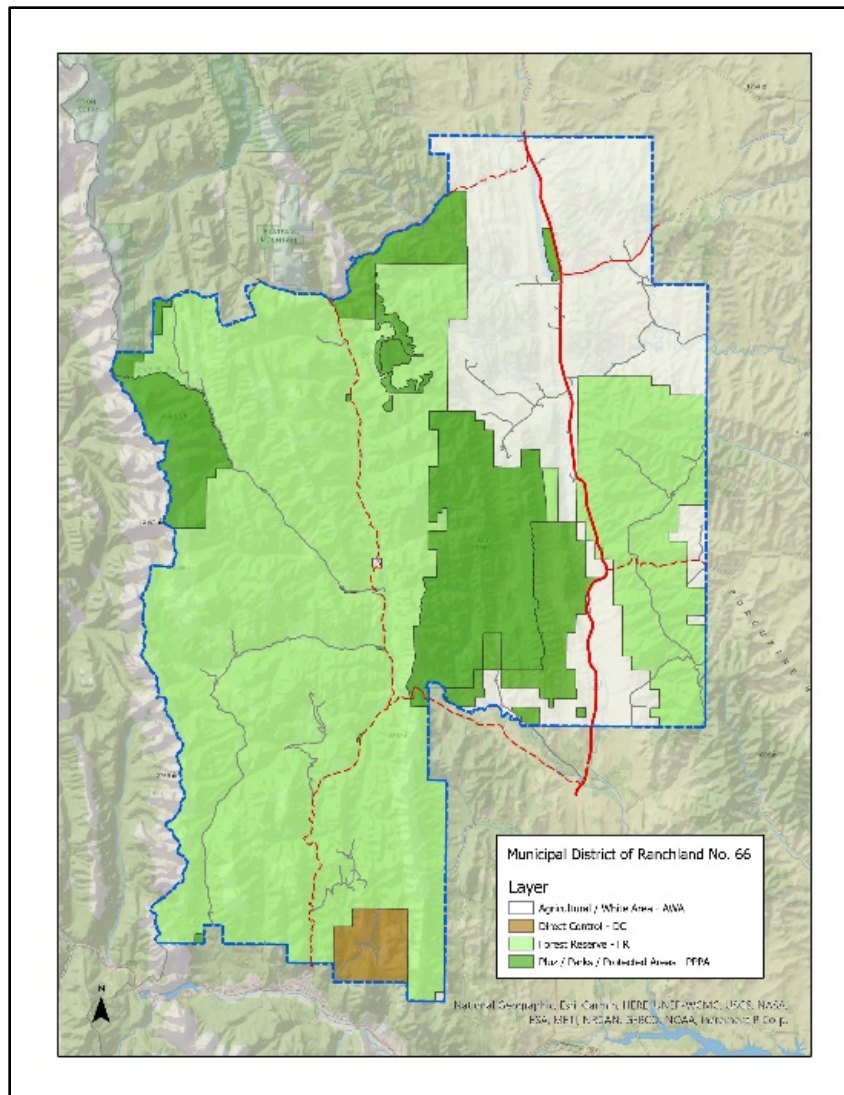
For generations, our residents have sought to protect and preserve the land that have provided their livelihoods. Ranching is the foundation of our residents' way of life, and they have practiced it—and continue to practice it—sustainably.

Our residents' commitment to our environment is derived from both economic necessity and a deep respect for our land and community. They desire to see their ranching operations pass on to future generations and they recognize that this is only possible if the land upon which those operations are based is sustained.

These principles form the bedrock of Ranchland's governance. Our Municipal Development Plan (MDP) *Land Use Bylaw* (LUB) sets out that:

The purpose of this Ranchland is to conserve agricultural lands, including grassland, while accommodating land use activities which are compatible with the prevailing agricultural pursuits on privately held lands or leased lands in the white area of the municipality.

Likewise, our MDP establishes that our community's history is the reason for our environmental stewardship:



Nestled in the Rocky Mountains and rolling foothills of southern Alberta, the Municipal District of Ranchland No. 66 includes some of the finest ranching country in Canada. Located in the southwestern portion of the province, Ranchland's boundaries stretch north to Kananaskis Country, south to the border of the Crowsnest Pass, west to the British Columbian border and east to the ranch lands west of Willow Creek. The area possesses outstanding forestry, wildlife, and grazing resources, in addition to some of the most important watersheds in Alberta. Administered by the Department of Municipal

Affairs since the early 1900s as an Improvement District, and the community of Ranchland seized the opportunity provided by the GoA to incorporate and become a self-governing municipality in 1995. As part of the transformation from an Improvement District to a Municipal District, Ranchland was required to develop a series of new policies, procedures, and bylaws.

In a proactive effort to pursue its vision of preserving and promoting their unique ranching heritage, Ranchland Council initiated the preparation of this MDP to further reinforce the Community's vision for land use goals and objectives as defined in the LUB.

Ranchland thinks ahead. We are proactive and we plan for the future. We need to take the long view because our communities' way of life depends on our land stewardship and a forward-thinking mindset.

These submissions reflect that stewardship and forward-thinking mindset. They are our community's opinion on coal development now and in the future.

Our intention is to address two broad topics: 1) how should coal development be regulated in Alberta and 2) what should a new coal policy include? Those topics will be discussed in the following headings:

9. Involving municipalities in green zone coal development proposal decisions;
10. Requiring the Alberta Energy Regulator (the "AER") to broaden the scope of their environmental considerations;
11. Prohibiting coal development in the South Saskatchewan River basin;
12. Removing politics from coal development and the AER;
13. Requiring notice for new approval applications;
14. Accessing regions already subject to coal development;
15. Requiring bonds for exploration approvals; and
16. Taxing coal.

Items #3, #6 and #8 relate to a new coal policy. The remaining items relate to how coal development is regulated. These submissions will also include a short outline of Ranchland's opinion on the Coal Policy Committee's jurisdiction.

Each section will contain background explaining the problem followed by a proposal for how to solve the problem.

We appreciate the opportunity to make these submissions and to present our vision to the CPC.

1. Involving Municipalities in Coal Development

Background

Although Ranchland would have filed statements of concern with the AER, we weren't aware of the applications for proposed exploration programs in 2019 or earlier. The first Ranchland became aware was in 2020, after permits to explore had already been granted and in some cases the exploration work was completed.

Ranchland took the opportunity to make submissions to the AER on two applications for coal exploration programs.² The first was CEP200001 granted to Cabin Ridge Project Limited on September 25, 2020 and the second was CEP200002 granted to Elan Coal Ltd. on September 10, 2020.³

² The statement of concern filed by Ranchland in CEP200001 is attached as Schedule "A". the statement of concern filed in CEP200002 is identical.

³ CEP200001 and CEP200002 are each attached to these submissions as Schedule "B".

Ranchland filed a statement of concern with respect to both coal exploration approvals. The statements of concern mirrored each other because our concerns with both approvals were the same. The first concern raised by Ranchland in both statements of concern related to the approval's compliance with Ranchland's bylaws including the *Municipal Development Plan* and the *Land Use Bylaw*.

In granting each of CEP200001 and CEP200002, the AER disregarded Ranchland's legislative framework with a single sentence:

In relation to the Ranchland's concern about this CEP interfering with its mandate to pursue development in accordance with its land use bylaw, AER approvals prevail over municipal bylaws pursuant to section 619 of the *Municipal Government Act (MGA)*.

There was no consideration given to Ranchland's planning framework beyond the AER's bare statement that section 619 of the MGA permits the AER approval to take precedence over municipal bylaws.

It is no wonder that Albertans are skeptical about the regulatory process. Our bylaws are adopted after significant public consultation. Public hearings are required for each planning bylaw adopted by a municipality, and those public hearings are strictly regulated by the *MGA*:

Planning bylaws

692(1) Before giving second reading to

- (a) a proposed bylaw to adopt an intermunicipal development plan,
- (b) a proposed bylaw to adopt a municipal development plan,
- (c) a proposed bylaw to adopt an area structure plan,
- (d) a proposed bylaw to adopt an area redevelopment plan,
- (e) a proposed land use bylaw, or
- (f) a proposed bylaw amending a statutory plan or land use bylaw referred to in clauses (a) to (e),

a Council must hold a public hearing with respect to the proposed bylaw in accordance with section 230 after giving notice of it in accordance with section 606.

Municipalities play a significant role in the lives of Albertans. They are required to plan for the future and to develop strategies for development. At odds with that approach is the AER's ability to run roughshod over and disregard long term municipal planning.

Proposal

Ranchland's long term mindset planning and land stewardship extends into the Green Zone even though the primary landholder and manager is the GOA. Ranchland plays a critical role in assisting the GOA in meeting it's own management goals for those same lands both in well-established roles like enforcing the Weed Control Act, Emergency Services, road network and bridges, and less tangible services supplied to help the GOA in maintaining habitat integrity and limit cumulative effects from human footprint. Some examples are community and disposition holders support to management efforts to protect the environment, riparian management programs, support to GOA operational field staff, support to recreational planning for the area, consultation for all the area land management plans, weed control assessment resources and tracking programs, and much more.

Municipalities need to be considered and involved in decisions around coal development and there are precedents to follow. The most relevant precedent is the *Agricultural Operation Practices Act* ("**AOPA**").

Like coal mining and exploration approvals, in order to receive an approval under AOPA parties must apply to an approval officer. That approval officer is required to reject an application if it is inconsistent with a municipal development plan:

Considerations on approvals

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,

(a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, or

(b) there is no inconsistency with the municipal development plan land use provisions and the requirements are met or a variance may be granted under section 17 and compliance with the variance meets the requirements of the regulations, the approval officer

(i) must consider matters that would normally be considered if a development permit were being issued...

[emphasis added]

Approval officers appointed under AOPA are also required to consider a municipality's land use bylaw. If an application does not comply with a municipal development plan, the approval officer "must deny the application".

Applicants may appeal to the Natural Resources Conservation Board (the "**NRCB**"). AOPA sets out the items the NRCB is required to consider:

25(4) In conducting a review the Board

...

(g) must have regard to, but is not bound by, the municipal development plan...

The NRCB must consider a municipal development plan but, unlike an approval officer, the NRCB is not bound by it.

Ranchland submits that this is the approach that ought to be followed with regulatory approvals for coal projects. It recognizes the importance municipalities have in the lives of Albertans and will prevent future approvals from ignoring municipal planning, as occurred in CEP200001 and CEP200002.

Applying this approach to the AER is consistent with the *Responsible Energy Development Act* ("**REDA**") and the *Coal Conservation Act* ("**CCA**"). Like under AOPA, the AER has a two-step appeal process. Further, like the AER, the NRCB has the same powers under section 619 of the MGA:

619(1) A license, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC prevails, in accordance with this section, over any statutory plan, land use bylaw, subdivision decision or development decision by a subdivision authority, development authority, subdivision and development appeal board, or the Land and Property Rights Tribunal or any other authorization under this Part.

Unlike the AER, however, the NRCB "must have regard to" a municipal development plan. It cannot disregard that municipal development plan like the AER did in CEP200001 and CEP200002. The AER should have the same requirements imposed upon it as the NRCB is subject to.

2. Requiring the AER to Consider Environmental Issues

Background

In the statements of concern filed in both CEP 200001 and CEP200002, Ranchland raised two concerns that were not considered by the AER: 1) the approvals pertained to

habitat for threatened and endangered species and 2) the approvals had a cumulative effect with other activities and approvals.

Again, the AER failed to consider either issue:

The CEP impacts are localized and temporary in nature. The letter of authority is issued for a five (5) year term; two (2) years for operations and three (3) years for reclamation.

With respect to the Ranchland's concerns about wildlife, Elan is required to adhere to all timeline restrictions imposed in the Mountain Goat and Bighorn Sheep Zone, the Grizzly Bear Zone, and the Key Wildlife and Diversity Zones.

As it pertained to cumulative effects, the AER only considered the effect of the Approval being applied for. Remarkably, even though the decisions are identical for both CEP200001 and CEP200002 and the decisions were issued 15 days apart, the AER did not consider the cumulative effects of both approvals upon the same landscape.

Coal mining has a significant impact upon the landscape. Cumulative effects of that impact need to be considered with each approval, regardless of whether the approval is for a coal mine or an exploration permit.

Both CEP200001 and CEP200002 are located upon critical habitat for two threatened species: the Westslope cutthroat trout and the bull trout. Both species have recovery strategies under the *Species at Risk Act*. Those recovery strategies have identified critical habitat that will be subject to CEP200001 and CEP200002.

The recovery strategies also set out a list of activities likely to destroy critical habitat. The list includes water extraction, mechanical forest removal, linear disturbances, mining and off-highway vehicle use. Each activity is contemplated in CEP200001 and CEP200002.

Section 58 of the *Species at Risk Act* sets out a prohibition on the destruction of any critical habitat for an aquatic species:

Destruction of critical habitat

58(1) Subject to this section, no person shall destroy any part of the critical habitat of any listed endangered species or of any listed threatened species—or of any listed extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada— if

...

(b) the listed species is an aquatic species;

No consideration was given to the critical habitat designation for or the presence of either the Westslope cutthroat trout or the bull trout, nor was any consideration given to cumulative effects.

That the approvals were granted without consideration for species at risk, the other approvals or other land uses is difficult to reconcile. For our residents to trust the AER and the regulatory processes, the AER cannot ignore these factors.

Proposal

Ranchland proposes that, like the requirement to consider a municipal development permit, the AER be required to consider cumulative effects and species at risk. That requirement ought to be legislated under both *REDA* and the *CCA*.

Section 3 of the *Responsible Energy Development Act General Regulation* sets out the factors the AER is required to consider in determining an application for an approval:

Factors to consider on applications, etc.

3 For the purposes of section 15 of the Act, where the Regulator is to consider an application or to conduct a regulatory appeal, reconsideration or inquiry in respect of an energy resource activity under an energy resource enactment, the Regulator shall consider

- (a) the social and economic effects of the energy resource activity,
- (b) the effects of the energy resource activity on the environment, and
- (c) the impacts on a landowner as a result of the use of the land on which the energy resource activity is or will be located.

Ranchland submits that two items ought to be added to section 3 of the regulation and that those two items relate directly to approvals for coal development.

First, the AER shall consider whether an activity will impact a species listed under the *Species at Risk Act* and any critical habitat related to that species. Although the AER is required to consider the “environment”, the AER’s ability to ignore species at risk when issuing CEP200001 and CEP200002 demonstrates that it requires more direction.

Second, the AER shall consider the cumulative impacts of the approval in conjunction with current and future land uses, including recreational, economic or development uses or other approvals either applied for or granted. The linear footprint of resource development, temporary or otherwise, shall not be excluded from contributing to the habitat and species threshold limits in any cumulative effects studies, recreation planning, or land planning while the disturbance exists.

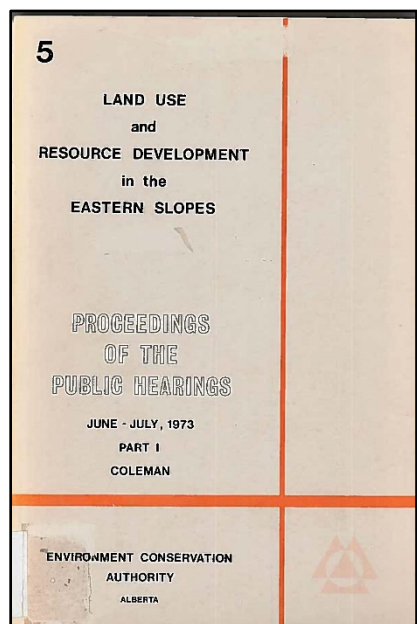
Requiring the AER to consider these two factors will curtail the AER's ability to ignore them.

3. Prohibiting Coal Development in the South Saskatchewan River Basin

Background

In the early 1970s, the GOA began a four-year period of consultation and study on development in the Eastern Slopes. The consultations were conducted by the Environment Conservation Authority (the “**Authority**”) and were done to identify the priorities and concerns of Albertans for the region.

One of the Authority's earliest acts was to develop a method by which resources were to be managed by the GOA in the Eastern Slopes Region.



To accomplish its mandate, the Authority began public consultations in 1973 to identify the priorities and concerns of Albertans for the region. The consultations were titled *Land Use and Development in the Eastern Slopes* (the “**Hearings**”).

The Hearings were transcribed and are available for review in a ten-volume series. Each volume in the series represents a unique location in which the hearings were held. For example, Part I in the series is the record of hearings in Coleman, Alberta conducted June 11 and 12, 1973. Part II and Part IIIB also relate to the South Saskatchewan River basin.

The Authority heard from a variety of constituents, including first nations, coal development proponents, environmental NGOs and ranchers. It received written and oral submissions from those groups and persons interested in development along the Eastern Slopes. At the commencement of the record of proceedings, the Authority noted as follows:

...land in the Eastern Slopes is now used or is proposed for use for such purposes as tourism, urban development, forest utilization, mineral resources industries, surface mining, oil and gas development, underground coal mining, agriculture, watershed conservation, domestic water supplies, hydroelectric power developments, wildlife and fishing management, wilderness and natural areas, institutional use by charitable, religious and other groups, archaeological sites, research, Indian reservations and national and provincial parks.

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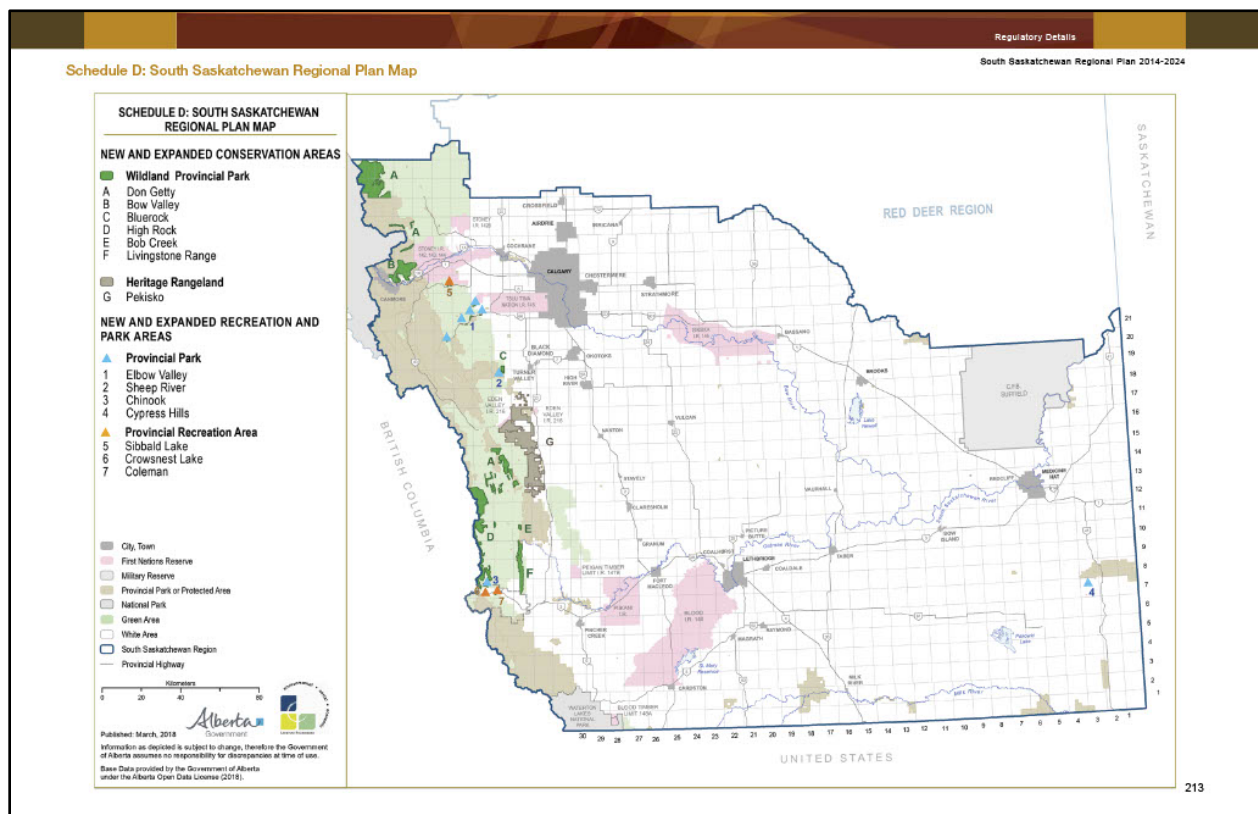
On March 31, 2020, the Minister of Alberta Energy rescinded the 1976 Coal Policy.⁴ Nine days later, on April 8, 2020, the AER rescinded Directive 061.

The second reason the 1976 Coal Policy remains relevant is because the concerns that drove the policy remain concerns today. Wildlife, water, the environment all remain the chief concerns of Albertans interested in how coal is developed in the future.

Ranchland is focused on Southwestern Alberta. That is where our municipal district is located and that is the area of concern for our residents. The area of specific concern is the South Saskatchewan River basin.

Proposal

Any new coal policy should prohibit any coal related activities in the headwaters of the entire South Saskatchewan River Basin. The South Saskatchewan River basin is defined in Schedule “C” to the South Saskatchewan Regional Plan.



The reason that coal activities should be prohibited in the South Saskatchewan River basin is threefold:

⁴ The rescission was first announced May 15, 2020 and was made effective June 1, 2020. However, the rescission was actually signed by the Minister of Energy on March 31, 2020.

- a. Lack of Water Resources;
- b. Conflict with current uses; and
- c. Biodiversity and environmental concerns.

a) Lack of Water Resources

There is a dearth of water supply in the South Saskatchewan River basin. It is scarce throughout Ranchland and the basin generally. The South Saskatchewan Regional Plan noted how vulnerable the basin is to water pressure:

Scientific studies indicate that severe droughts have occurred during the past 2,000 years, with an average duration of more than 10 years. At least 20 short droughts occurred during the twentieth century, including a 10-year dry period starting in 1977. The drought of the 1930s is one of the most notable and was the most severe and prolonged drought since the beginning of western settlement. On a provincial scale the 2001-2002 drought had the driest back-to-back years in 74 years.

The South Saskatchewan Regional Plan notes that the basin is overallocated, 75% of which is allocated to agriculture. In their article, *Water for Coal Developments: Where Will it Come From?*⁵, Professor Nigel Banks and Cheryl Bradley consider the over-allocation of water resources in the South Saskatchewan River Basin:

...water in the South Saskatchewan River Basin (SSRB) – and especially within the Oldman River Basin – is in short supply. Indeed, the SSRB (with the exception of the Red Deer Basin) has long been considered to be over-allocated in terms of licensed appropriations and accordingly it (outside the Red Deer Basin) has been closed to new license applications since 2007 (with some exceptions discussed below). In closing the basin, the [Government of Alberta] was giving effect to the terms of the approved Water Management Plan for the South Saskatchewan River Basin (SSRB WMP). The WMP stated the rationale for this decision as follows (at 7):

It has been determined during preparation of this plan that the limits for water allocations have been reached or exceeded in the Bow, Oldman and South Saskatchewan River sub basins and flow regimes have been altered by water diversions. This has created risks for both water users and the aquatic environment. In drier years lower priority licenses are not able to receive their total allocation. Existing diversions have also adversely affected the aquatic environment including the riparian vegetation, in the Bow, Oldman and South Saskatchewan River sub basins. Increased withdrawals of water within

⁵ <https://ablawg.ca/2020/12/04/water-for-coal-developments-where-will-it-come-from/>

existing licenses further degrade aquatic ecosystem health. Issuing more licenses compounds these adverse aquatic effects and increases risk to existing licenses.

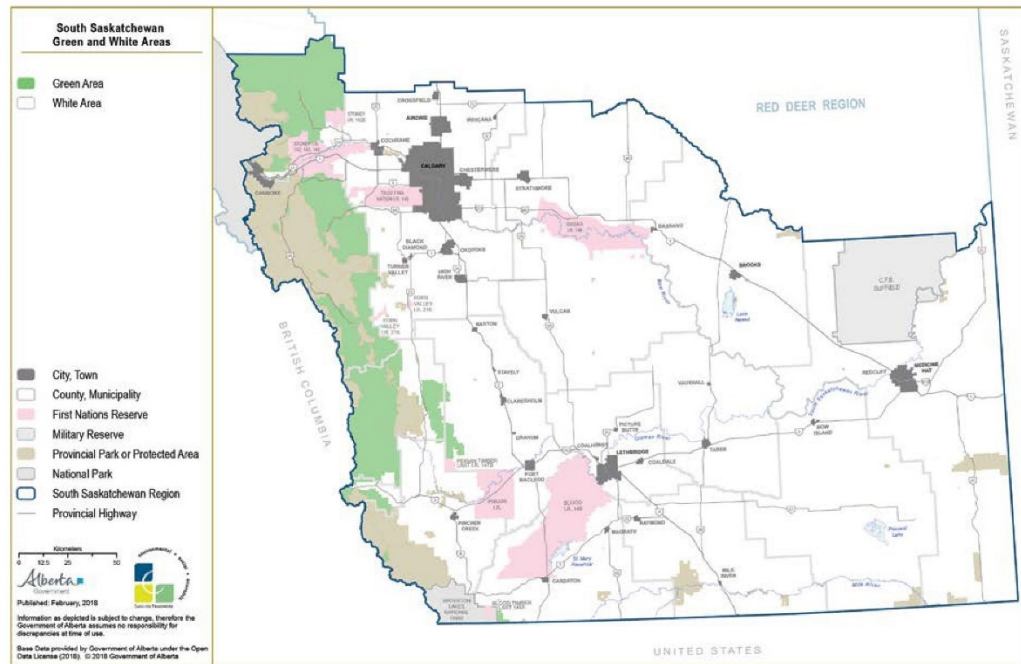
The GOA gave effect to the closure through the adoption of the Bow, Oldman and South Saskatchewan River Basin Water Allocation Order, Alta Reg 171/2007 (BOSS Allocation Order) under the terms of section 35 of the *Water Act*, RSA 2000, c W-3...That said, unless and until amended, the Basin is closed to new allocations except in accordance with the terms of the BOSS Allocation Order. The Department of Environment and Parks has given effect to this by rejecting new applications that cannot bring themselves within one of the exceptions established by the Order. The Environmental Appeal Board has confirmed that practice...The GoA has recently reaffirmed this position in its Water Allocation Policy for Closed River Basins in the South Saskatchewan River Basin Directive (September 2016) which provides that “This Directive affirms the government’s expectation since the approval of the Plan by Cabinet in April 2006 that applications for any new water withdrawals from the closed sub-basins will not be considered unless the applications fit within the specific exceptions in the “Regulation”.

Our residents require water. Our ranchers require water. Farmers and other agricultural users require water. Aquatic species require water. Recreational users require water. The problem is that there is not enough of it in the South Saskatchewan River basin making it a precious commodity. There is no capacity for coal development in this region considering over allocation and the very serious risk of heavy metal contamination at source in the headwaters.

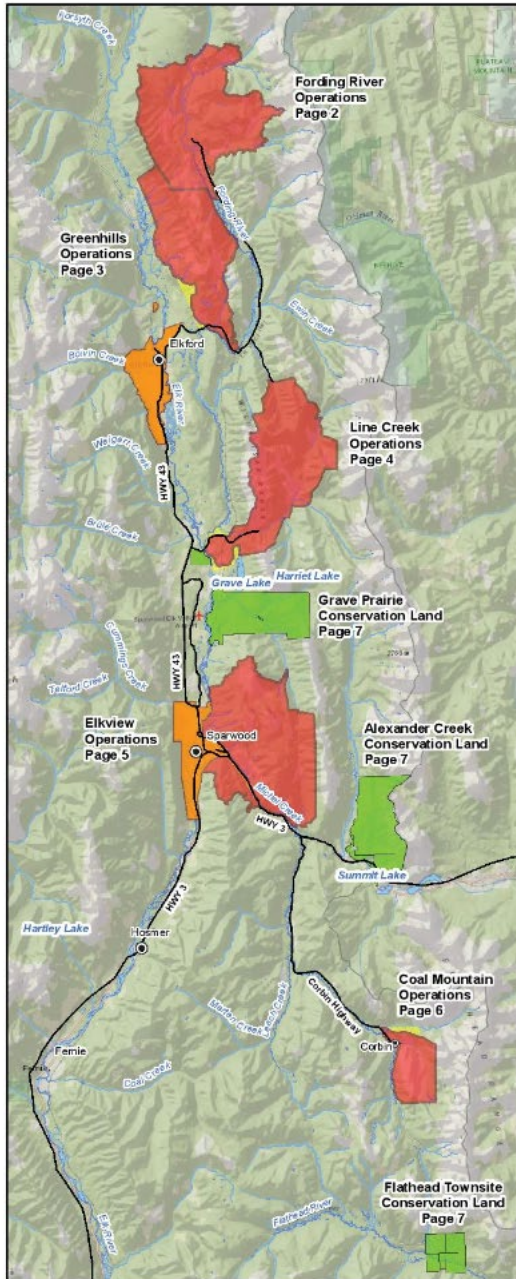
b) Conflict with Current Uses

Except for portions of the Eastern Slopes, the South Saskatchewan River basin is settled land. The portion of the Eastern Slopes that is unsettled is the most environmentally pristine land left in Southern Alberta.

Map 4: Green and White Areas



Open pit coal development is extremely intensive. It takes a lot of land to operate an open pit coal mine. For example, consider the mines operated by Teck Resources in the Elk Valley directly across the British Columbia border from Ranchland.



This is a map released by TECK which outlines the areas of its activity that are closed off to general access by members of the public as a result of the coal mine. More details related to this map are available online in the published document *Teck Access Boundaries in the Elk Valley 2019- 20*⁶.

The red zones on the map are the locations where entry is prohibited. Prohibited entry includes recreational holders. As it pertains to the Elkview Operations, the prohibition extends up to the border of the Town of Sparwood, which appears in orange.

There is a significant amount of land required for open pit coal mining and coal exploration. In consideration of the green and white zones in the South Saskatchewan River basin, there is little room for coal development. Any coal development would have a significant disruptive effect on current land users.

In the white zone, coal development would displace agricultural users and property owners.

The green zones in the South Saskatchewan River basin are limited. Coal development in those zones would remove large tracts of land for disposition holders (grazing and forestry), recreational users and property owners.

In Ranchland, the users most effected would be ranchers, disposition holders (grazing and forestry), property owners and recreational users. Significant portions of land within Ranchland's jurisdiction would be needed to accommodate any coal development.

⁶ <https://www.teck.com/media/2019-2020-Elk-Valley-Access-Maps.pdf>

c. Environmental Concerns

Multiple submissions have outlined the environmental concerns associated with open pit coal development. Instead of repeating those submissions, Ranchland wishes to cite paragraph 1351 of the Joint Review Panel's decision in *Benga Mining Limited Grassy Mountain Coal Project*:

[1351] We assess the cumulative effects of the project, along with previous and other reasonably anticipated impacts on [Westslope cutthroat trout ("WSCT")] and its aquatic habitat, to be as follows:

- Magnitude: high. The cumulative effects will jeopardize recovery of WSCT due to the combined effects of critical habitat loss, changes in stream flows, alteration of water quality (particularly through increased selenium concentrations), reduced habitat suitability, likely precipitation of calcite, reduction in sediment supply, and changes in stream temperatures. These changes are cumulative and synergistic and are likely to cause a detectable change (and potentially extirpation) in WSCT populations in Gold and Blairmore Creeks beyond natural variation, given the known sensitivities of WSCT.*
- Geographic extent: provincial. While most effects are local or regional, the cumulative effects are likely to jeopardize recovery of WSCT at the provincial scale, and result in the local reduction or extirpation of WSCT populations in Gold and Blairmore Creek.*
- Frequency: continuous. Cumulative impacts on water quality, alteration of flows, impacts on sediment supply, and changes to instream temperatures are all continuous and cumulatively likely to permanently alter habitat suitability in Gold and Blairmore Creeks, jeopardizing the recovery of WSCT populations.*
- Duration: persistent. Cumulative impacts on water quality, alteration of flows, impacts on sediment supply, and changes to instream temperatures will persist after the closure and reclamation of the mine, permanently altering habitat suitability in Gold and Blairmore Creeks and jeopardizing recovery of WSCT populations.*
- Reversibility: irreversible. Cumulative impacts on water quality, alteration of flows, impacts on sediment supply, and changes to instream temperatures are likely to be irreversible in a meaningful timeframe for the recovery of WSCT in Gold and Blairmore Creeks, jeopardizing the recovery of WSCT populations. We consider this effect irreversible given the timeframe required for conditions to return to background (decades) and the Gold and Blairmore Creek populations of WSCT being on the low-end of long-term population viability.*
- Ecological and social context: negative. WSCT in the project area are listed as threatened under SARA and the provincial Wildlife Act.*

The negative impacts outlined in paragraph 1351 relate only to aquatic habitats. The Joint Review Panel found similarly negative and irreversible impacts on landscapes, terrain and wildlife.

Ranchland was a participant/intervenor and led evidence, both lay and expert, cross examined the applicant and made argument before the Grassy Mountain Joint Review Panel. It did so because it had a strong belief that the Grassy Mountain project was not in the best interest of our community.

The proposed Grassy Mountain project is emblematic of the coal projects being considered in Ranchland. The project involved removing the topsoil and vegetation from Grassy Mountain to expose the limestone cap rock. Once exposed, the project would dismantle and remove the cap rock using explosives. Finally, Grassy Mountain would be replaced with a large open pit.

Open pit coal mines do not belong in the South Saskatchewan River Basin. This is neither the place, nor the time for this type of development. There is no ability to reclaim the resulting stain upon our landscape.

4. Removing politics from coal development and the Alberta Energy Regulator

Background

Politics need to be taken out of future decisions on coal development.

Rescinding the 1976 Coal Policy was inherently a decision driven by the vested interests of coal mining proponents. Much can be said about the suspicious timing of the rescission—the Friday of a long weekend during the pandemic shutdown—and much can be said about who was and was not consulted.

After the policy was rescinded, Ranchland residents and ranchers filed an Originating Application in the Court of Queen's Bench seeking judicial review of the decision. Ranchland applied to be an intervenor in that judicial review.

We know that project proponents advocated for rescission of the 1976 Coal Policy because of the evidence that was obtained in the course of the judicial review. On December 21, 2020 the witness produced by Alberta Energy was cross examined. He provided the following testimony (as summarized)⁷:

- The coal industry sought the 1976 coal policy rescission by Alberta Energy;

⁷ Mr. Moroskat's Questioning Transcript was filed in Court of Queen's Bench Action No. 2001-08938 on January 6, 2021 and is available upon request.

- Alberta Energy understood that rescission would be viewed positively the coal industry;
- Alberta Energy met “fairly regularly” with coal industry proponents over the course of “multiple meetings with multiple companies on a variety of different subjects”; and
- Rescinding the 1976 Coal Policy “would've come up in these discussions”.

The meetings did not happen in view of public discourse. They happened behind closed doors.

Meetings were not offered to others. Alberta Energy’s witness testified that the ranchers who brought the judicial review application were not consulted, nor was Ranchland, environmental groups or First Nation representatives.

There are two reasons that coal proponents sought out Alberta Energy:

- a) The 1976 Coal Policy was never adopted as legislation; and
- b) Section 67 of *REDA* allows the Minister of Energy to issue directives to the Alberta Energy Regulator (the “AER”).

Proposal

a) Adopting the Coal Policy as Legislation

In order to remove politics, the next coal policy needs to be legally binding. In this regard, Ranchland supports and repeats the submissions to the Coal Policy Committee authored by Professor Nigel Banks, *A New Coal Policy for Alberta in the Age of Net Zero: Questions of Implementation*⁸.

In addition to Professor Banks’s submissions, Ranchland proposes that any changes to the new coal policy should undergo the same process as changes to a regional plan adopted under the *Alberta Land Stewardship Act*:

5 Before a regional plan is made or amended, the Stewardship Minister must

- (a) ensure that appropriate public consultation with respect to the proposed regional plan or amendment has been carried out, and present a report of the findings of such consultation to the Executive Council, and
- (b) lay before the Legislative Assembly the proposed regional plan or amendment.

⁸ Those submissions are attached to these as Schedule “C”.

Requiring consultation and approval by the Legislature before implementing changes to the new coal policy will remove political interference with a new coal policy.

b) Section 67 of REDA

Section 67 of *REDA* grants the Minister of Energy the ability to interfere in the AER's operations:

67(1) When the Minister considers it to be appropriate to do so, the Minister may by order give directions to the Regulator for the purposes of

(a) providing priorities and guidelines for the Regulator to follow in the carrying out of its powers, duties and functions, and

(b) ensuring the work of the Regulator is consistent with the programs, policies and work of the Government in respect of energy resource development, public land management, environmental management and water management.

(2) The Regulator shall, within the time period set out in the order, comply with directions given under this section

It is through section 67 of *REDA* that the 1976 Coal Policy and Directive 061 were rescinded. Since it was rescinded, the Minister of Energy used section 67 to restore the 1976 Coal Policy (Ministerial Order 054-2021), prohibit new approvals (Ministerial Order 054-2021) and suspend existing approvals (Ministerial Order 093-2021).

We know that section 67 was used by Alberta Energy to direct the AER to rescind the 1976 Coal Policy. Again, during cross examination, Alberta Energy's witness noted that he immediately notified the AER by telephone once the decision was made to rescind the 1976 Coal Policy.

If the new coal policy is not legally binding, then section 67 of *REDA* needs to be repealed. The Minister's ability to direct and influence the AER using section 67 or otherwise cannot continue if Albertans are to trust the regulatory process.

5. Requiring Notice for New Approval Applications

Background

Every municipality in Alberta is mandated and encouraged to collaborate and work together with neighboring municipalities, both urban and rural, to avoid duplication and conflict when considering developments. For example, municipalities are mandated to prepare intermunicipal development plans and to inform neighbors of development proposals near their boundaries even though they are operating within their jurisdiction

and within their rights to manage their own development decisions. These plans are often contentious and require considerable resources and time to complete and update. The process, however, is valuable

It is not unreasonable, for GOA authorities to be required to at least inform the municipalities of development proposals, including proposals that involve crown land, like the forestry or “green zone” within a municipality’s boundary or close proximity to a boundary.

In failing to provide notice, provincial authorities destroy all the good will they are trying to cultivate by deciding to not inform or consult municipalities when development proposals are received. As it stands, the only way a municipality would be aware of a coal proposal within the green zone, is to be made aware of it by the party making the proposal, by the public, or by consistently monitoring a regulator’s website and trying to determine if applications were happening near or within a municipality.

Previous to 2013, Ranchland had no experience with the coal industry, coal exploration programs or the AER’s coal regulation. Since 2013, the municipality has experienced an opaque, unclear process, obscured by jurisdictional bureaucracy and pre-set to allow relatively free rein for coal exploration programs.

This relative free rein for the industry was demonstrated over and over. First with the rescission of Alberta’s coal policy opening millions of acres of formerly protected lands to exploration and removing the policy that the AER used as a directive on where coal development was permitted. Thrown out with the policy was the original intent of the protections from coal mining in watersheds integral to southern Alberta’s sustainability, the promises by the GOA to take back private mineral rights in protected category 1 lands.

Immediately following the rescission, several new speculative mining companies were formed, the AER’s coal manual was rescinded and same day coal exploration permits were granted by the AER in critical habitat lands, in watersheds containing species at risk and, in at least one case, without the consent of the other disposition holders on the same lands in direct contravention of the AER’s own rules.

Ranchland found out about the coal exploration program when ranchers with grazing dispositions started questioning the MD as to why there were new roads being built all over the ridges within their dispositions. There was no consultation, no notification and no window for expression of concerns for disposition holders, municipalities or concerned Albertans.

This process of same day approvals for coal exploration on sensitive lands within Ranchland happened with at least three different coal exploration company programs.

These programs represent hundreds of kilometers of new roads, about 1,650 drilling pads with many servicing up to five wells, and numerous stream crossings.

On June 2, 2020, one day after the 1976 Coal Policy rescission became effective, the AER granted approval CEP190006 to Montem Resources Alberta Operations Ltd. ("Montem"). The approval granted Montem the ability to conduct exploration over a large tract of land in Ranchland.

Ranchland received no notice of Montem's application.

Ranchland was made aware that Montem was conducting exploration in Ranchland's jurisdiction when residents advised Ranchland that the exploration was occurring. Our understanding is that those residents did not receive notice of the application either.

Under *REDA*, an applicant is only required to provide public notice of an application:

31 The Regulator shall on receiving an application ensure that public notice of the application is provided in accordance with the rules.

Public notice is only required to be provided as follows:

5.1 For the purpose of section 31 of the Act, public notice of an application may be provided by any of the following methods:

- (a) posting notice of the application on the Regulator's website;*
- (b) publishing notice of the application in one or more issues of a newspaper that has daily or weekly circulation in the area of the Province to which the application relates;*
- (c) providing notice of the application through a telecommunication system or electronic medium;*
- (d) making available a copy of the application in one or more offices of the Regulator in the area of the Province to which the application relates;*
- (e) delivering notice of the application to any person determined by the Regulator;*
- (f) any other method the Regulator decides is appropriate.*

Trusting a regulatory process requires knowledge that the process is happening. Albertans will only trust the regulatory process if directly affected parties and municipalities are provided with prior notice of approval applications.

Proposal

Ranchland proposes a notice requirement similar to an Alberta Utility Commission application. In brief, a notice requirement for an overhead transmission line requires:

Public notification to occupants, residents and landowners within 800 meters measured from the edge of the proposed right-of-way for the transmission line and/or the edge of the proposed substation site boundary. and:

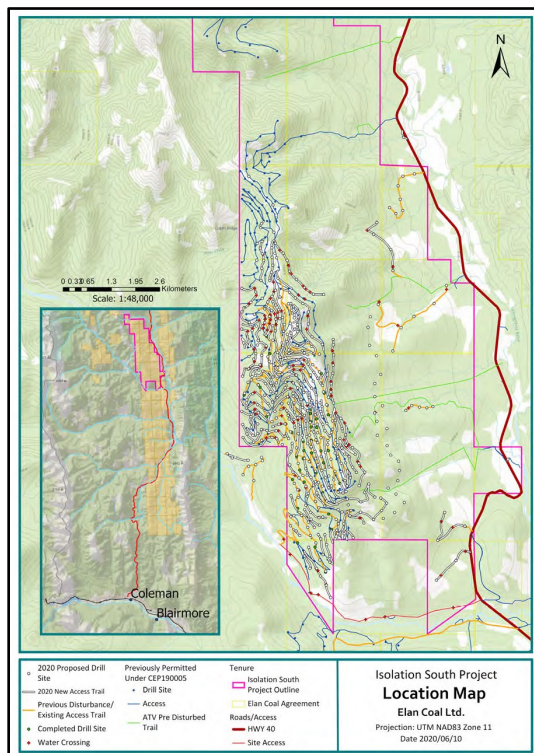
Personal consultation with occupants, residents and landowners on or directly adjacent to the proposed right-of-way for the transmission line and/or proposed substation site location.⁹

Notice of an open pit coal mine or of coal exploration should be no different than notice of a new transmission line. Arguably, the impact of an open pit coal mine is more substantial than the impact of a transmission line.

Ranchland proposes that notice of coal development or exploration be provided to all residents, occupants, landowners, municipalities and disposition holders within 15 km of the proposed activity by the AER (instead of the proponent or applicant). This requirement would be in addition to the current requirement of public notice.

6. Access after Exploration

Background



Since 2019, coal development in Ranchland has centered primarily around exploration. The development has opened a vast expanse of wilderness that saw minimal human activity before coal exploration. By inserting cut lines, access trails and roadways into what was previously dense forest, recreational and other users are now able to access large portions of Ranchland for the first time.

Although access to public land is a short-term benefit to recreationalists, it brings added pressure to the environment and disposition holders. The potential for increased conflict with disposition holders is a concern for Ranchland.

Off highway vehicle (OHV) use, hunting and camping are all activities that are widely permitted on public land. New trails cut lines and pathways may lead to an increase in these activities.

⁹ Alberta Utilities Commission, Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines.

Proposal

Land use planning is required to consider the impact of recent coal activity. The process used to establish Castle Provincial Park and confirm OHV access in Bob's Creek Wildland Park needs to occur in the lands opened following coal exploration. Of concern to Ranchland is public access to Porcupine Hills and the forest reserve North of highway #3.

Policies requiring access management need to be adopted and required following any exploration or other types of coal development. Ranchland has experienced the failings of access management, and the examples from other areas of Alberta where access management has worked successfully need to be emulated here.

The Coal Policy Committee ought to recommend further mandatory land use planning after coal development. There are two mechanisms by which further land use planning can occur:

1. The new Coal Policy could include consideration for post coal recreation and other access, such as limiting OHV and other vehicle use on cut lines; or
2. The Coal Policy Committee may recommend the establishment of additional sub regional plans under the *South Saskatchewan Regional Plan* and the *Alberta Land Stewardship Act* to deal with this issue.

7. Requiring Bonds for Exploration Approvals

Background

The *Coal Conservation Rules* require project proponents to post a performance bond as follows:

82(1) The Regulator may, when considering an application under the Act or these Rules to assure compliance with the Act and these Rules, require the applicant to deposit with the Regulator a security in an amount not exceeding

(a) \$500 per hectare of land directly affected by the proposed development if that land is within the Plains Region, or

(b) \$2500 per hectare of land directly affected by the proposed development if that land is in the Foothills or Mountain Regions.

As far as Ranchland is aware, no performance bond was required for CEP190006, CEP200001 or CEP200002.

The level of reclamation required is also unspecified. Much of the reclamation required is discretionary upon the AER.¹⁰

¹⁰ See, for example, section 3 of the *Coal Conservation Rules* and section 12 of the CCA.

Proposal

Ranchland submits that reclamation ought to be properly defined in the CCA and REDA. It is only through properly defining reclamation that the AER will know the appropriate bond amount.

Ranchland further submits that the performance bond be raised to reflect actual costs related to the proposed activity. Under the current bond structure, coal proponents would only be required to post \$2,500 to reclaim a hectare of land in Ranchland. Given the pristine nature of our jurisdiction, \$2,500 is insufficient to properly reclaim land disturbed by coal mining. The cost of any shortfall would thereby be borne by the GOA and/or Ranchland.

A performance bond should also be a condition of obtaining an exploration approval. Exploration requires significant disruption to the landscape, including linear disturbances, watercourse crossing damage, disruption to other disposition holders and users, introduction to invasive species and weeds, expansion into habitat areas leading to access management challenges.

8. Taxing Coal

Background

There appear to be two sources from which GOA receives coal royalties:

- 1) royalties obtained pursuant to lease agreements between lessees and the GOA and
- 2) royalties obtained through the *Coal Royalty Regulation*.



A significant amount of coal development occurs in minerals that are held by private entities—they are not owned by the Province of Alberta. In those freehold minerals, Alberta is unable to obtain royalties through lease agreements. Significantly, private ownership is dominant in the coal producing regions of Southwestern Alberta, as indicated by the above map.

In brief, the *Coal Royalty Regulation* applies a 1% royalty to bituminous coal and a \$2/tonne royalty to subbituminous coal. This royalty would apply regardless of whether the Province of Alberta is the lessor.

The predominant form of coal mining in the Eastern Slopes is bituminous coal.

Proposal

Given the volume of coal development on privately owned mineral rights, the 1% royalty scheme is insignificant to properly compensate the Province of Alberta for the environmental harm attributable to coal development. To put it another way, 1% is insufficient compensation for an open pit coal mine that involves scraping off the top of a mountain and replacing it with an open pit while adding significant amounts of Selenium to the South Saskatchewan River watershed.

Ranchland proposes to the GOA to significantly raise the royalty rate on bituminous coal to properly compensate Albertans for the environmental harm attributed to coal development. Ranchland suggests that a commission be struck to recommend a coal royalty that properly considers the negative impact of coal development on the environment and society.

The new royalty scheme ought to be included in the new coal policy. The 1976 Coal Policy, for example, set out the original royalty scheme.

a) Freely Held Mineral Rights

Ranchland notes the considerable amount of freely held mineral rights within the Eastern Slopes generally and its jurisdiction specifically. The only method to completely ensure protection from coal development is for the Province of Alberta to hold mineral rights.

Ranchland does not have a proposal to require this; it simply raises the issue as a point of concern for the Government of Alberta to consider.

8. The Coal Policy Committee's Jurisdiction

The CPC mandate is set out in its Terms of Reference. Ranchland's view is that the committee's mandate is broadly defined and includes areas related to the environment and water resources.

The Terms of Reference define the committee's purpose as follows:

The purpose of the Committee is to conduct engagement as necessary to prepare a report to the Minister on the advice and perspectives of Albertans about the management of coal resources in connection with matters under the Minister's administration, including:

- *Mines and Minerals Act, relating to coal tenure and royalty;*
- *Coal Conservation Act, relating to resource management and conservation; and*
- *Responsible Energy Development Act, relating to regulatory oversight of responsible coal development.*

REDA sets out that the AER's authority includes jurisdiction over water and the environment:

(s) “*specified enactment*” means

(i) *the Environmental Protection and Enhancement Act,*

(ii) *the Public Lands Act,*

(iii) *the Water Act,*

(iv) *Part 8 of the Mines and Minerals Act,*

(v) *a regulation under an enactment referred to in subclauses (i) to (iv), or*

(vi) *any enactment prescribed by the regulations.*

25 Except to the extent that the regulations provide otherwise, an application, decision, or other matter under a specified enactment in respect of an energy resource activity must be considered, heard, reviewed or appealed, as the case may be, in accordance with this Act and the regulations and rules instead of in accordance with the specified enactment.

This CPC’s jurisdiction is to provide a report to the Minister of Energy on “matters under the Minister’s administration”. The Minister’s administration includes the AER and the AER has primary jurisdiction over environment and water regulation. It is for this reason that Ranchland submits that the Coal Policy Committee may hear and consider matters relating to the environment and water.

Conclusion

These submissions represent the opinions of Ranchland and its residents. They are provided to the CPC so that it can assist the GOA with developing “a twenty-first century natural resource development policy”¹¹.

The recommendations included herein reflect the direct experience of Ranchland. Our jurisdiction has been subject to significant coal activities since the 1976 Coal Policy was rescinded. Those impacts include linear disturbances, new roadways, vegetation removal and habitat destruction. The impacts have directly affected our residents whose grazing leases and private property have been subject to coal exploration.



Ranchland and its residents want to have confidence in the regulatory processes. That confidence, however, will only come if two issues are engaged:

- 1) a new coal policy that properly reflects the concerns of Albertans and

¹¹ Terms of Reference.

2) a significantly altered regulatory framework is implemented.

On the first issue, the new coal policy should prohibit coal development in the South Saskatchewan River basin. The reasons for prohibiting development are obvious and have been the subject of submissions to the Coal Policy Committee.



Coal Mining Activity in Elk Valley, British Columbia

A new Coal Policy needs to consider how Albertans will access lands accessible following coal development. The advent of cut lines roadways and pathways in previously untouched public land needs to be considered by the committee and inserted into a new coal policy.

The new coal policy also needs to develop a taxation framework that properly rewards and supports Albertans and municipalities. The framework developed in the new coal policy needs a significant overhaul from the current framework.

On the second issue, the current regulatory framework does not work. The AER has full discretion to ignore crucial issues that arise as a result of coal development, including negative impacts on species at risk, lack of compliance with municipal land use planning and the cumulative effects of additional development. Each of these factors were disregarded by the AER in its decisions to grant CEP190006, CEP200001 and CEP200002.

Project proponents are similarly able to limit opposition to coal development by limiting who receives notice of coal development. In the case of CEP190006, Ranchland is unaware whether anyone directly affected by the exploration approval was provided notice of or filed a statement of concern with the AER.

Finally, the bonds required for coal development need to be revised and extended to exploration approvals. Proper costing of reclamation needs to occur so that Albertans are not bound to the liabilities and impacts of coal development and exploration.

Each of these submissions are logical. They are supported by science and history and our hope is that the CPC and the Minister of Energy will take them seriously, failing which Albertans will continue to view the AER and regulatory processes with significant skepticism.

We thank you, the CPC for considering our submissions in its report to the Minister of Energy.

Yours Truly,

A handwritten signature in blue ink, appearing to read "Ron Davis", written over a horizontal line.

Ron Davis, Reeve
M.D. of Ranchland No. 66



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www.aer.ca

September 25, 2020

Cabin Ridge Project Limited

Sent Via Email: Darren.Weaver@wgpl.biz

**RE: Notice of Decision: Authorization Issued
COAL EXPLORATION PROGRAM: CEP200001**

Dear Sir/Madam,

The Alberta Energy Regulator (AER) has reviewed Cabin Ridge Project Limited's Exploration Program application (CEP200001) submitted on June 3rd, 2020 and subsequent revisions dated August 27, 2020 and September 1, 2020.

Pursuant to section 20(1) of the Public Lands Act and in accordance with the Code of Practice for Exploration Operations made under the Environmental Protection and Enhancement Act, **Cabin Ridge Project Limited** is hereby authorized to enter upon and occupy the public lands described in the application and subsequent SIR responses for the purpose of conducting a coal exploration program, subject to the methods and environmental conditions outlined in the application and subsequent SIR responses, the conditions in the enclosed Schedule "A" and all other applicable statutory requirements. In the event of a conflict between Schedule "A" and the application, Cabin Ridge Project Limited is to comply with the conditions in Schedule "A".

Please use the file number, **CEP200001**, on all related plan submissions and correspondence.

Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Development Act General Regulation*.

If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices:

Appeals. Regulatory appeal requests should be emailed to the Regulatory Appeal inbox at RegulatoryAppeal@aer.ca.

Should you have any questions regarding the above decision, please contact the undersigned at AERSurfaceActivityApplication@aer.ca, quoting the disposition number.

Sincerely,



Rushang Joshi
Manager, Coal Mining
Regulatory Applications
Alberta Energy Regulator

cc: Alberta Culture
Email: historical.LUP@gov.ab.ca

SCHEDULE “A”

1. 007 **IN THIS DOCUMENT**, unless the context indicates otherwise:

“approval” whenever required, must be in writing.

“authority” means: this document or the right to occupy public land granted by this document.

“Authorizer” means: the "Authorizer" duly designated under the *Public Lands Act*.

“officer of the regulatory body” means: an employee of the Regulatory body, responsible for the management of surface activity on the land.

“Regulator” means: Alberta Energy Regulator.

“holder” means: the recipient of the right to occupy public land granted by this document.

“land(s)” means: the specific land which the holder is authorized to occupy by this document.

“Regulatory body” means: the Department of Environment and Sustainable Resource Development or the Alberta Energy Regulator.

Payments required by this document are to be made payable to the

“Government of Alberta”

- a) The holder shall comply with all relevant laws in the Province of Alberta.
- b) A copy of this authority shall be retained on the job site during all phases of your activity, including, if applicable, preparation, construction, development, maintenance and abandonment.
- c) The holder shall not conduct any activity on the land where prior rights have been issued without the consent of the holder of these prior rights.
A list of prior and subsisting authorizations and dispositions (prior rights)

issued on the quarter sections included in this authority can be purchased from Alberta Energy, Crown Land Data Support, Telephone: 780-422-1395, or the Alberta Energy Website: <http://www.energy.gov.ab.ca>.

Surface rights plot sheets showing active dispositions, and individual activity plans can be purchased from IHS, Main Floor, Petroleum Plaza, South Tower, 9915 – 108 Street, Edmonton, Alberta, T5K 2G8, Telephone: 780-413-3380, Fax: 780-413-3383 or Website: <http://www.petrosurveys.ca>.

- d) The holder shall contact the registered trapper, if any trapping areas (TPA) have been issued on the quarter sections included in this authority, at least TEN DAYS PRIOR TO COMMENCING ANY ACTIVITY. This must be done by registered mail and we recommend personal communication follow-up. The trapper's name and address may be obtained from Alberta Energy, Crown Land Data Support (Telephone: 780-422-1395). For other information concerning registered traplines, contact the Client and Licensing Service, Environment and Sustainable Resource Development, Edmonton, Alberta (Telephone: 780-427-5185) upon receipt of this approval. The holder may be responsible for any damage to traps, snares or other improvements.
- e) Where applicable, the Regulatory body may, in addition to any other charges, assess a further charge of 50 cents per acre (\$1.24 per hectare) on every acre or part acre in this authority to fund the Trapper's Compensation Program. Classification of lands can be obtained from Alberta Energy, Crown Land Data Support, Telephone: 780-422-1395 or the Alberta Energy Website: <http://www.energy.gov.ab.ca>.
- f) The holder is responsible for obtaining any necessary federal, municipal and other permits and approvals with respect to this authority.
- g) The holder agrees to hold harmless the Regulatory body from any and all third party claims, demands, or actions for which the holder is legally responsible, including those arising out of negligence or willful acts by the holder or the holder's employees or agents. This hold harmless shall survive this Agreement.

- h) The holder shall indemnify and save harmless the Regulatory body from any and all claims, actions, suits, or similar proceedings commenced by any competent regulatory body against the holder or the Regulatory body in connection with the activity or holder's use of the land, including without limitation the local municipality, any other department or agency of the Alberta Government or the Government of Canada.
 - i) The holder shall, at its own expense and without limiting its liabilities herein, insure its operations under a contract of General Liability Insurance, in accordance with the *Alberta Insurance Act*, in an amount not less than \$2,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss of use thereof. The holder shall provide the Regulatory body with acceptable evidence of all the insured prior to the commencement of the work and shall promptly provide the Regulatory body with a certified true copy of each policy upon request.
 - j) This authority is granted subject to further amendment by the Regulatory body, in its sole discretion.
 - k) The holder shall furnish proof, upon request, that the holder has complied with any and all of the provisions of the holder's disposition in a form and time required by the Regulatory body.
2. 078 The holder shall contact and advise the officer of the Regulatory body of its intentions:
- prior to entry upon the lands, for a stated purpose,
 - prior to any additional construction during the term of this authority,
 - at the completion of operations, and
 - upon abandonment of this activity.
 - AERSurfaceActivityApplication@aer.ca
3. 091 The holder shall not conduct any activity on any of the lands included in this authority between the dates specified unless otherwise approved in writing by the officer of the Regulatory body:

Key Wildlife and Biodiversity Zones North of Highway #1: January 15 to April 30; South of Highway #1, and West of Highway # 2: December 15 to April 30

Mountain Goat and Sheep Zone: August 23-June 30

4. 092 The holder shall conduct operational, construction and maintenance activities outside of the breeding season for the following specified lands (emergency situations exempt):

Within 1000 metres of Sensitive Raptor nests: March 15 to July 15

Within 500 metres of Burrowing Owl nests: April 1 to August 15

Within 500 metres of Swift Fox den: February 15 To July 31

Within 200 metres of a Piping Plover water body: April 15 to July 31

5. 098 Trails are not to exceed the following maximum width: 7 metres.
6. 084 Unless otherwise approved in writing by the officer of the Regulatory body, the holder shall ensure that drill sites shall not exceed **(20) metres x (35) metres.**
7. 998 On sites where mechanical mulching methods are utilized to clear forest cover, the holder shall ensure that fine woody debris (wood chips) is managed as per ***Directive SD 2009-01 Management of Wood Chips on Public Land.***
8. When a new access approaches an existing linear feature, the holder shall construct a line at an appropriate angle (45 degrees), within 200m of the intersection, to eliminate a continuous line of sight, unless otherwise approved in writing by the officer of the Regulatory body.
9. 133 Activities shall not result in the deposition or placement of debris, soil or other deleterious materials into or through any watercourse and/or water body, or on the ice of any watercourse and/or water body.
10. 099 Where materials are available, rollback shall be applied as follows unless alternative methods can be supported by Regulated Industry Standards and are approved by the officer of the Regulatory body:

- a) Place rollback across the entire width for a distance of at least 200 metres from all points of intersection with roads and permanent watercourses.
11. 139 Where crossings have been removed, the bank or shoreline of all affected watercourses and/or water bodies shall be immediately stabilized and/or alterations or modifications to the bank or shoreline shall be restored.
12. 136 All crossings shall maintain fish passage. Crossings shall be compliant with Alberta Environment's Code of Practice under the Water Act, Water (Ministerial) Regulation.
13. Except for approved crossings of watercourses, the holder shall leave a buffer zone of undisturbed vegetation between any proposed activity (edge of clearing) and any watercourse or water body (top of valley escarpment and/or high water mark), unless otherwise approved in writing by the officer of the Regulatory body, according to the following requirements:
- a) Large permanent watercourses shall have a setback of at least 100m
 - b) Small permanent watercourses shall have a setback of at least 45m
 - c) Intermittent watercourses and springs shall have a setback of at least 45m
 - d) Ephemeral watercourses shall have a setback of at least 15m
 - e) Lakes shall have a setback of at least 100m
 - f) Permanent shallow open water ponds shall have a setback of at least 100m
 - g) Semi-permanent ponds/wetlands shall have a setback of at least 100m.
 - h) Non-permanent seasonal wetlands shall have a setback of at least 45m
 - i) Non-permanent temporary wetlands shall have a setback of at least 15m
14. 995 The holder shall utilize the lands only during frozen or dry ground conditions.
15. 087 The holder shall utilize the land only for temporary undeveloped access. If surface disturbance is necessary, or if permanent access is required, the holder shall contact the officer of the Regulatory body regarding routing, salvage and construction requirements.

16. 994 Any activity on the land during adverse ground conditions must be suspended if the activity is likely to cause unacceptable damage to vegetation or soil as may be determined by the holder or the officer of the Regulatory body.
17. 231 The program crosses designated trail(s) in the CNT980012 snowmobile area. When operations encroach on trail(s), the holder shall ensure that:
- Lines crossing trail(s) are constructed in a manner that will not remove snow from the trail(s), produce ruts in the trail(s), or otherwise adversely affect travel.
 - No mechanical equipment is permitted to travel along the trail(s), unless approved in writing by the officer of the Regulatory body.
 - Warning signs are posted along trail(s) advising trail users of the upcoming crossing location.
18. 993 Prior to entry on the land, the holder shall steam clean all equipment, including seeders.
19. 992 The holder shall strip and pile the topsoil separately from any fine woody debris (wood chips) and subsoil in such a manner that it can be distributed evenly over the disturbed area when operations have been completed. Where topsoil is less than 15 centimetres, conservation shall include the topsoil plus part of the upper subsoil up to a total depth of 15 centimetres (unless considering chemically unsuitable).
20. 151 Soil and surface erosion and sedimentation shall be prevented and controlled on all disturbed lands.
21. 991 The holder shall not dispose of drilling waste off lease without a further disposition or letter of authority under Section 20 of the *Public Lands Act*.
22. 160 The holder shall utilize impermeable tanks to collect all liquid effluents and dispose of at an authorized disposal facility.
23. 121 All woody debris and leaning trees must be slashed, limbed and bucked flat to the ground unless otherwise approved by the officer of the Regulatory body. The length of slashed woody debris shall not exceed 2.4 metres.

24. 899 The holder shall cut, keep down and destroy all noxious and restricted weeds and control noxious weeds as per the *Public Lands Act*.
25. 109 When seeding pasture or cultivated lands, the agronomic or forage seed shall meet or exceed Certified #1 as outlined in the *Canada Seeds Act* and Seed Regulations. Seed mixes are to be free of species listed in the *Weed Control Act*. A seed certificate (under the rules and regulation of the *Canada Seeds Act*) for each species shall be provided to the AER, upon request.
26. 162 In addition to complying with Federal, Provincial and local laws and regulations respecting the environment, including release of substances, the holder shall, to the Regulatory body's satisfaction, take necessary precautions to prevent contamination of land, water bodies and the air with particulate and gaseous matter, which, in the opinion of the Regulatory body in its sole discretion, is or may be harmful.
27. 898 Unless otherwise specified by a local officer of the Regulatory body, initial efforts at re-establishing a vegetative cover on disturbed surfaces described in the Activities Plan for this exploration program must be accomplished by:
- a) Seeding using only a native species seed mixture that shall be approved by the departmental officer. The holder shall provide a certificate of seed analysis for each species (Refer to the Native Plan Re-Vegetation Guidelines for Alberta, (2001).
 - b) Seeding an annual non-invasive cover-crop in conjunction with a native species seed mixture that must be approved by the departmental officer. The holder shall provide a certificate of seed analysis for each species upon request (Refer to the Native Plant Re-Vegetation Guidelines for Alberta, (February 2001).
 - c) Allowing the land to re-vegetate through natural processes without seeding.
28. 900 The holder shall provide to the Regulatory body within 60 days of March 31 each year of this program until a reclamation certificate is issued, an Annual Report (submitted electronically to AERSurfaceActivityApplication@aer.ca) indicating;

- a) requirements consistent with Section 7.1.5 of the Code of Practice for Exploration Operations made under the Environmental Protection and Enhancement Act,
 - b) the area of new disturbance cleared and/or utilized as approved under this program,
 - c) any sites added to the program including the authorization issued by the Regulator,
 - d) the total area of lands within the program intensively used (disturbed),
 - e) a listing of all core hole sites or accesses converted to disposition under the *Public Lands Act*,
 - f) the total area of lands within the program cleared but not explored to date and intent for completion, and
 - g) any other pertinent information relevant to this program.
29. 902 Upon completion of the exploration programs on public lands, charges for timber damage, if applicable, will be assessed in accordance with the current schedule (Timber Damage Assessment Table).
30. 235 The holder shall complete reclamation, including line and site clean-up, soil stabilization and wood debris handling progressively and concurrently with operations.
31. 903 The authorization, when issued, will be for a term as indicated effective from the date of this authority.
32. 1200 The Disposition Holder must manage all weeds as per the *Weed Control Act*.
33. 1058 The Disposition Holder must remove all garbage and waste material from this site to the satisfaction of the Regulatory Body, in its sole discretion.
34. 1040 Under section 54.01 of the Public Lands Act this access Disposition is closed.

The Disposition Holder must install access control* that restricts unauthorized access.

The access control* identified below must be effective, maintained, and monitored.

Access control* may include one or more of the following:

- earthen berm* (not to be used within native grassland*) permanent or temporary removal of water crossing structures
- barricades
- locked gates

- manned checkpoints
- pre-existing access control*

Where effective access control* already exist, additional access control* is not required. If a pre-existing access control* is selected, it must effectively restrict unauthorized access to the new road. The applicant* must ensure all access occurs through the pre-existing access control, and success of access management is subject to the pre-existing access control as a term or condition of this Disposition.

35. 1041 Where access control* is required, the Disposition Holder must erect a sign at the access entry point where the sign:

- Is a minimum size of 1 metre x 1 metre,
- Has a white reflective background with a checkered border.
- Text is a minimum of 5 centimetres (2 in.) displayed in black lettering,
- Displays the Company name or logo on the bottom right hand corner,
- Is located at a visible spot next to the access at least 1.5 metres off the ground and must not be obscured by plowed snow or vegetation.

36. 1042 Where access control* is required, the Disposition Holder must erect a sign with the identified text;

NOTICE:

Under the authority of the section 54.01 of the Public Lands Act this road is closed beyond this point for the purpose of:

<Disposition Holder to Identify Purpose>

Unauthorized on-highway motor vehicles are prohibited. Operators of unauthorized vehicles beyond this point may be found guilty of an offence.

WARNING: GATE MAY BE LOCKED WITHOUT NOTICE.

NOTE: Contact information is provided for those eligible for use of this access.

In case of an emergency call: 1- <Disp Holder to provide #>

Company contact information

Commercial Users may contact the Disposition Holder at: 1-<Disp Holder to provide #>

For general inquiries please call: 1-<Disp Holder to provide #>

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37. 1941 From December 16th to July 31st, the Disposition Holder must not conduct activities on Fescue Grasslands* in the Montane, Foothills Parkland and Foothills Fescue Natural subregions.

38. 1944 On native grasslands*, the Disposition Holder must not crimp straw* subject to the following exceptions:

- The straw* used for crimping must be sourced from a native species* from the same ecological range site* as the Lands;
- The weed analysis for the straw* used for crimping must comply with the Weed Control Act, as amended or replaced from time to time.

39. 1949 In native grasslands* as identified by the Subalpine and Alpine* Subregion Layer of the Landscape Analysis Tool that requires Assisted Natural Recovery*, the Disposition Holder must submit a request for Assisted Natural Recovery in writing to the Regulatory Body that contains all of the following:

Rationale for conducting Assisted Natural Recovery*;

- A description of the proposed site for Assisted Natural Recovery* including information with respect to the following:
- Whether the Lands are subject to high erosion*;
- Whether the soil on the Lands has been disturbed to an area greater than 50m²;
- Whether the Lands are prone to invasion from agronomic or weed species;
- A proposed seed mix composition for re-vegetation of the Lands:
- That is consistent with native plant communities that are adjacent* to and in the immediate vicinity of the Lands as determined by the Range Plant Community Type and Carrying Capacity for the Subalpine and Alpine* Subregions of Alberta, as amended or replaced from time to time;
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- Any other information requested by the Regulatory Body.

Term: 5 Years

Two years for operation with an expiry on September 23, 2022

Three years for reclamation with an expiry on September 23, 2025

Appendix I

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

1. Reporting the discovery of historic resources

Pursuant to Section 31 of the *Historical Resources Act*, should any archaeological, paleontological, historic period resources or Aboriginal traditional use sites of a type described below be discovered during the conduct of activities associated with the program, staff of the Heritage Division of Alberta Culture (Telephone: 780 431-2300) are to be contacted immediately. It may then be necessary for the Heritage Division to issue further instructions regarding the documentation of these resources.

2. Post development impact assessment audits

Pursuant to Section 37(2), of the *Historical Resources Act*, the Heritage Division of Alberta Culture may require a post development impact assessment audit in the spring and/or summer of the following year and annually until the program is closed.

3. Aboriginal traditional use sites that Alberta Culture consider as historic resources under the *Historical Resources Act*

Aboriginal traditional use sites that are considered by Alberta Culture to be historic resources under the *Historical Resources Act* include but may not be limited to the following:

- historic cabins remains
- cabins (unoccupied)
- ceremonial plant or mineral gathering sites
- ceremonial sites/spiritual sites
- cultural or community camp sites
- gravesites
- historic settlement(s)/Homestead(s)
- historic sites
- oral history sites
- trails
- wickiup/sweat lodge sites

This listing updates the list on pages 5 and 6 of *Tourism, Parks, Recreation and Culture Guidelines for First Nations Consultation on Resource Development and Land Management* (referred to as the ACCS Consultation Guidelines), Part V of Alberta's *First Nations Consultation Guidelines on Land Management and Resource Development*, dated November 14, 2007.

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All water use must be in compliance with the *Water Act*. Online applications for the temporary diversion of water (TDL) can be submitted to the Alberta Energy Regulator (AER) through WATERS, which can be accessed at <http://www.aer.ca/> (click System & Tools).

Unless exempt under the *Water (Ministerial) Regulation*, the holder shall comply with the *Code of Practice for Watercourse Crossings* under the *Water Act*.

For additional information on the *Water Act* and water management please visit the AER at: <http://www.aer.ca/applications-and-notice> or contact the AER Customer Contact Centre: Inquiries@aer.ca or 1-855-297-8311.

Edmonton (Twin Atria)
2nd Floor, Twin Atria Building
4999 - 98 Avenue
Edmonton, Alberta T6B 2X3
Canada

tel 780-638-4491
fax 780-442-1459

www.aer.ca

September 25, 2020

Cabin Ridge Project Limited

Sent Via Email: Darren.Weaver@wgpl.biz

**RE: Notice of Decision: Authorization Issued
COAL EXPLORATION PROGRAM: CEP200001**

Dear Sir/Madam,

The Alberta Energy Regulator (AER) has reviewed Cabin Ridge Project Limited's Exploration Program application (CEP200001) submitted on June 3rd, 2020 and subsequent revisions dated August 27, 2020 and September 1, 2020.

Pursuant to section 20(1) of the Public Lands Act and in accordance with the Code of Practice for Exploration Operations made under the Environmental Protection and Enhancement Act, **Cabin Ridge Project Limited** is hereby authorized to enter upon and occupy the public lands described in the application and subsequent SIR responses for the purpose of conducting a coal exploration program, subject to the methods and environmental conditions outlined in the application and subsequent SIR responses, the conditions in the enclosed Schedule "A" and all other applicable statutory requirements. In the event of a conflict between Schedule "A" and the application, Cabin Ridge Project Limited is to comply with the conditions in Schedule "A".

Please use the file number, **CEP200001**, on all related plan submissions and correspondence.

Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Development Act General Regulation*.

If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices:

Appeals. Regulatory appeal requests should be emailed to the Regulatory Appeal inbox at RegulatoryAppeal@aer.ca.

Should you have any questions regarding the above decision, please contact the undersigned at AERSurfaceActivityApplication@aer.ca, quoting the disposition number.

Sincerely,



Rushang Joshi
Manager, Coal Mining
Regulatory Applications
Alberta Energy Regulator

cc: Alberta Culture
Email: historical.LUP@gov.ab.ca

SCHEDULE “A”

1. 007 **IN THIS DOCUMENT**, unless the context indicates otherwise:

“approval” whenever required, must be in writing.

“authority” means: this document or the right to occupy public land granted by this document.

“Authorizer” means: the "Authorizer" duly designated under the *Public Lands Act*.

“officer of the regulatory body” means: an employee of the Regulatory body, responsible for the management of surface activity on the land.

“Regulator” means: Alberta Energy Regulator.

“holder” means: the recipient of the right to occupy public land granted by this document.

“land(s)” means: the specific land which the holder is authorized to occupy by this document.

“Regulatory body” means: the Department of Environment and Sustainable Resource Development or the Alberta Energy Regulator.

Payments required by this document are to be made payable to the

“Government of Alberta”

- a) The holder shall comply with all relevant laws in the Province of Alberta.
- b) A copy of this authority shall be retained on the job site during all phases of your activity, including, if applicable, preparation, construction, development, maintenance and abandonment.
- c) The holder shall not conduct any activity on the land where prior rights have been issued without the consent of the holder of these prior rights.
A list of prior and subsisting authorizations and dispositions (prior rights)

issued on the quarter sections included in this authority can be purchased from Alberta Energy, Crown Land Data Support, Telephone: 780-422-1395, or the Alberta Energy Website: <http://www.energy.gov.ab.ca>.

Surface rights plot sheets showing active dispositions, and individual activity plans can be purchased from IHS, Main Floor, Petroleum Plaza, South Tower, 9915 – 108 Street, Edmonton, Alberta, T5K 2G8, Telephone: 780-413-3380, Fax: 780-413-3383 or Website: <http://www.petrosurveys.ca>.

- d) The holder shall contact the registered trapper, if any trapping areas (TPA) have been issued on the quarter sections included in this authority, at least TEN DAYS PRIOR TO COMMENCING ANY ACTIVITY. This must be done by registered mail and we recommend personal communication follow-up. The trapper's name and address may be obtained from Alberta Energy, Crown Land Data Support (Telephone: 780-422-1395). For other information concerning registered traplines, contact the Client and Licensing Service, Environment and Sustainable Resource Development, Edmonton, Alberta (Telephone: 780-427-5185) upon receipt of this approval. The holder may be responsible for any damage to traps, snares or other improvements.
- e) Where applicable, the Regulatory body may, in addition to any other charges, assess a further charge of 50 cents per acre (\$1.24 per hectare) on every acre or part acre in this authority to fund the Trapper's Compensation Program. Classification of lands can be obtained from Alberta Energy, Crown Land Data Support, Telephone: 780-422-1395 or the Alberta Energy Website: <http://www.energy.gov.ab.ca>.
- f) The holder is responsible for obtaining any necessary federal, municipal and other permits and approvals with respect to this authority.
- g) The holder agrees to hold harmless the Regulatory body from any and all third party claims, demands, or actions for which the holder is legally responsible, including those arising out of negligence or willful acts by the holder or the holder's employees or agents. This hold harmless shall survive this Agreement.

- h) The holder shall indemnify and save harmless the Regulatory body from any and all claims, actions, suits, or similar proceedings commenced by any competent regulatory body against the holder or the Regulatory body in connection with the activity or holder's use of the land, including without limitation the local municipality, any other department or agency of the Alberta Government or the Government of Canada.
 - i) The holder shall, at its own expense and without limiting its liabilities herein, insure its operations under a contract of General Liability Insurance, in accordance with the *Alberta Insurance Act*, in an amount not less than \$2,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss of use thereof. The holder shall provide the Regulatory body with acceptable evidence of all the insured prior to the commencement of the work and shall promptly provide the Regulatory body with a certified true copy of each policy upon request.
 - j) This authority is granted subject to further amendment by the Regulatory body, in its sole discretion.
 - k) The holder shall furnish proof, upon request, that the holder has complied with any and all of the provisions of the holder's disposition in a form and time required by the Regulatory body.
2. 078 The holder shall contact and advise the officer of the Regulatory body of its intentions:
- prior to entry upon the lands, for a stated purpose,
 - prior to any additional construction during the term of this authority,
 - at the completion of operations, and
 - upon abandonment of this activity.
 - AERSurfaceActivityApplication@aer.ca
3. 091 The holder shall not conduct any activity on any of the lands included in this authority between the dates specified unless otherwise approved in writing by the officer of the Regulatory body:

Key Wildlife and Biodiversity Zones North of Highway #1: January 15 to April 30; South of Highway #1, and West of Highway # 2: December 15 to April 30

Mountain Goat and Sheep Zone: August 23-June 30

4. 092 The holder shall conduct operational, construction and maintenance activities outside of the breeding season for the following specified lands (emergency situations exempt):

Within 1000 metres of Sensitive Raptor nests: March 15 to July 15

Within 500 metres of Burrowing Owl nests: April 1 to August 15

Within 500 metres of Swift Fox den: February 15 To July 31

Within 200 metres of a Piping Plover water body: April 15 to July 31

5. 098 Trails are not to exceed the following maximum width: 7 metres.
6. 084 Unless otherwise approved in writing by the officer of the Regulatory body, the holder shall ensure that drill sites shall not exceed **(20) metres x (35) metres.**
7. 998 On sites where mechanical mulching methods are utilized to clear forest cover, the holder shall ensure that fine woody debris (wood chips) is managed as per ***Directive SD 2009-01 Management of Wood Chips on Public Land.***
8. When a new access approaches an existing linear feature, the holder shall construct a line at an appropriate angle (45 degrees), within 200m of the intersection, to eliminate a continuous line of sight, unless otherwise approved in writing by the officer of the Regulatory body.
9. 133 Activities shall not result in the deposition or placement of debris, soil or other deleterious materials into or through any watercourse and/or water body, or on the ice of any watercourse and/or water body.
10. 099 Where materials are available, rollback shall be applied as follows unless alternative methods can be supported by Regulated Industry Standards and are approved by the officer of the Regulatory body:

- a) Place rollback across the entire width for a distance of at least 200 metres from all points of intersection with roads and permanent watercourses.
11. 139 Where crossings have been removed, the bank or shoreline of all affected watercourses and/or water bodies shall be immediately stabilized and/or alterations or modifications to the bank or shoreline shall be restored.
12. 136 All crossings shall maintain fish passage. Crossings shall be compliant with Alberta Environment's Code of Practice under the Water Act, Water (Ministerial) Regulation.
13. Except for approved crossings of watercourses, the holder shall leave a buffer zone of undisturbed vegetation between any proposed activity (edge of clearing) and any watercourse or water body (top of valley escarpment and/or high water mark), unless otherwise approved in writing by the officer of the Regulatory body, according to the following requirements:
- a) Large permanent watercourses shall have a setback of at least 100m
 - b) Small permanent watercourses shall have a setback of at least 45m
 - c) Intermittent watercourses and springs shall have a setback of at least 45m
 - d) Ephemeral watercourses shall have a setback of at least 15m
 - e) Lakes shall have a setback of at least 100m
 - f) Permanent shallow open water ponds shall have a setback of at least 100m
 - g) Semi-permanent ponds/wetlands shall have a setback of at least 100m.
 - h) Non-permanent seasonal wetlands shall have a setback of at least 45m
 - i) Non-permanent temporary wetlands shall have a setback of at least 15m
14. 995 The holder shall utilize the lands only during frozen or dry ground conditions.
15. 087 The holder shall utilize the land only for temporary undeveloped access. If surface disturbance is necessary, or if permanent access is required, the holder shall contact the officer of the Regulatory body regarding routing, salvage and construction requirements.

16. 994 Any activity on the land during adverse ground conditions must be suspended if the activity is likely to cause unacceptable damage to vegetation or soil as may be determined by the holder or the officer of the Regulatory body.
17. 231 The program crosses designated trail(s) in the CNT980012 snowmobile area. When operations encroach on trail(s), the holder shall ensure that:
- Lines crossing trail(s) are constructed in a manner that will not remove snow from the trail(s), produce ruts in the trail(s), or otherwise adversely affect travel.
 - No mechanical equipment is permitted to travel along the trail(s), unless approved in writing by the officer of the Regulatory body.
 - Warning signs are posted along trail(s) advising trail users of the upcoming crossing location.
18. 993 Prior to entry on the land, the holder shall steam clean all equipment, including seeders.
19. 992 The holder shall strip and pile the topsoil separately from any fine woody debris (wood chips) and subsoil in such a manner that it can be distributed evenly over the disturbed area when operations have been completed. Where topsoil is less than 15 centimetres, conservation shall include the topsoil plus part of the upper subsoil up to a total depth of 15 centimetres (unless considering chemically unsuitable).
20. 151 Soil and surface erosion and sedimentation shall be prevented and controlled on all disturbed lands.
21. 991 The holder shall not dispose of drilling waste off lease without a further disposition or letter of authority under Section 20 of the *Public Lands Act*.
22. 160 The holder shall utilize impermeable tanks to collect all liquid effluents and dispose of at an authorized disposal facility.
23. 121 All woody debris and leaning trees must be slashed, limbed and bucked flat to the ground unless otherwise approved by the officer of the Regulatory body. The length of slashed woody debris shall not exceed 2.4 metres.

24. 899 The holder shall cut, keep down and destroy all noxious and restricted weeds and control noxious weeds as per the *Public Lands Act*.
25. 109 When seeding pasture or cultivated lands, the agronomic or forage seed shall meet or exceed Certified #1 as outlined in the *Canada Seeds Act* and Seed Regulations. Seed mixes are to be free of species listed in the *Weed Control Act*. A seed certificate (under the rules and regulation of the *Canada Seeds Act*) for each species shall be provided to the AER, upon request.
26. 162 In addition to complying with Federal, Provincial and local laws and regulations respecting the environment, including release of substances, the holder shall, to the Regulatory body's satisfaction, take necessary precautions to prevent contamination of land, water bodies and the air with particulate and gaseous matter, which, in the opinion of the Regulatory body in its sole discretion, is or may be harmful.
27. 898 Unless otherwise specified by a local officer of the Regulatory body, initial efforts at re-establishing a vegetative cover on disturbed surfaces described in the Activities Plan for this exploration program must be accomplished by:
- a) Seeding using only a native species seed mixture that shall be approved by the departmental officer. The holder shall provide a certificate of seed analysis for each species (Refer to the Native Plan Re-Vegetation Guidelines for Alberta, (2001).
 - b) Seeding an annual non-invasive cover-crop in conjunction with a native species seed mixture that must be approved by the departmental officer. The holder shall provide a certificate of seed analysis for each species upon request (Refer to the Native Plant Re-Vegetation Guidelines for Alberta, (February 2001).
 - c) Allowing the land to re-vegetate through natural processes without seeding.
28. 900 The holder shall provide to the Regulatory body within 60 days of March 31 each year of this program until a reclamation certificate is issued, an Annual Report (submitted electronically to AERSurfaceActivityApplication@aer.ca) indicating;

- a) requirements consistent with Section 7.1.5 of the Code of Practice for Exploration Operations made under the Environmental Protection and Enhancement Act,
 - b) the area of new disturbance cleared and/or utilized as approved under this program,
 - c) any sites added to the program including the authorization issued by the Regulator,
 - d) the total area of lands within the program intensively used (disturbed),
 - e) a listing of all core hole sites or accesses converted to disposition under the *Public Lands Act*,
 - f) the total area of lands within the program cleared but not explored to date and intent for completion, and
 - g) any other pertinent information relevant to this program.
29. 902 Upon completion of the exploration programs on public lands, charges for timber damage, if applicable, will be assessed in accordance with the current schedule (Timber Damage Assessment Table).
30. 235 The holder shall complete reclamation, including line and site clean-up, soil stabilization and wood debris handling progressively and concurrently with operations.
31. 903 The authorization, when issued, will be for a term as indicated effective from the date of this authority.
32. 1200 The Disposition Holder must manage all weeds as per the *Weed Control Act*.
33. 1058 The Disposition Holder must remove all garbage and waste material from this site to the satisfaction of the Regulatory Body, in its sole discretion.
34. 1040 Under section 54.01 of the Public Lands Act this access Disposition is closed.

The Disposition Holder must install access control* that restricts unauthorized access.

The access control* identified below must be effective, maintained, and monitored.

Access control* may include one or more of the following:

- earthen berm* (not to be used within native grassland*) permanent or temporary removal of water crossing structures
- barricades
- locked gates

- manned checkpoints
- pre-existing access control*

Where effective access control* already exist, additional access control* is not required. If a pre-existing access control* is selected, it must effectively restrict unauthorized access to the new road. The applicant* must ensure all access occurs through the pre-existing access control, and success of access management is subject to the pre-existing access control as a term or condition of this Disposition.

35. 1041 Where access control* is required, the Disposition Holder must erect a sign at the access entry point where the sign:

- Is a minimum size of 1 metre x 1 metre,
- Has a white reflective background with a checkered border.
- Text is a minimum of 5 centimetres (2 in.) displayed in black lettering,
- Displays the Company name or logo on the bottom right hand corner,
- Is located at a visible spot next to the access at least 1.5 metres off the ground and must not be obscured by plowed snow or vegetation.

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NOTICE:

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<Disposition Holder to Identify Purpose>

Unauthorized on-highway motor vehicles are prohibited. Operators of unauthorized vehicles beyond this point may be found guilty of an offence.

WARNING: GATE MAY BE LOCKED WITHOUT NOTICE.

NOTE: Contact information is provided for those eligible for use of this access.

In case of an emergency call: 1- <Disp Holder to provide #>

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Three years for reclamation with an expiry on September 23, 2025

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Pursuant to Section 37(2), of the *Historical Resources Act*, the Heritage Division of Alberta Culture may require a post development impact assessment audit in the spring and/or summer of the following year and annually until the program is closed.

3. Aboriginal traditional use sites that Alberta Culture consider as historic resources under the *Historical Resources Act*

Aboriginal traditional use sites that are considered by Alberta Culture to be historic resources under the *Historical Resources Act* include but may not be limited to the following:

- historic cabins remains
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Unless exempt under the *Water (Ministerial) Regulation*, the holder shall comply with the *Code of Practice for Watercourse Crossings* under the *Water Act*.

For additional information on the *Water Act* and water management please visit the AER at: <http://www.aer.ca/applications-and-notice> or contact the AER Customer Contact Centre: Inquiries@AER.ca or 1-855-297-8311.

September 10, 2020

Elan Coal Ltd.

Sent Via Email: daniel@atrumcoal.com

RE: Notice of Decision: Authorization Issued
COAL EXPLORATION PROGRAM: CEP200002

Dear Sir/Madam,

The Alberta Energy Regulator (AER) has reviewed Elan Coal Ltd. (Elan)'s Coal Exploration Program application (CEP200002) submitted on June 17, 2020 and subsequent supplemental information request (SIR) responses submitted on July 23rd, August 6th, and August 12th, 2020.

Pursuant to section 20(1) of the *Public Lands Act* and in accordance with the *Code of Practice for Exploration Operations* made under the *Environmental Protection and Enhancement Act*, **Elan Coal Ltd.** is hereby authorized to enter upon and occupy the public lands described in the application and subsequent SIR responses for the purpose of conducting a coal exploration program, subject to the methods and environmental conditions outlined in the application and subsequent SIR responses, the conditions in the enclosed Schedule "A" and all other applicable statutory requirements. Elan shall ensure to avoid constructing loop roads and duplicate access for CEP 200002 to mitigate unnecessary environmental impact by utilizing the access road approved under CEP 190005. In the event of a conflict between Schedule "A" and the application, **Elan Coal Ltd.** is to comply with the conditions in Schedule "A".

The AER does not have the authority to make decisions for activities on lands administered under the *Provincial Park Act*. The proposed activities within the Oldman River North Provincial Recreation Area (PRA) administered under the *Provincial Park Act*, are not approved under this authorization.

Please use the file number, **CEP200002**, on all related plan submissions and correspondence.

Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Development Act General Regulation*.

If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals. Regulatory appeal requests should be emailed to the Regulatory Appeal inbox at RegulatoryAppeal@aer.ca.

Should you have any questions regarding the above decision, please contact the undersigned at AERSurfaceActivityApplication@aer.ca, quoting the disposition number.

Regards,



Rushang Joshi
Manager, Coal Mining
Regulatory Applications
Alberta Energy Regulator

cc: Alberta Culture
Email: historical.LUP@gov.ab.ca

SCHEDULE “A”

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Payments required by this document are to be made payable to the

“Government of Alberta”

- a) The holder shall comply with all relevant laws in the Province of Alberta.
- b) A copy of this authority shall be retained on the job site during all phases of your activity, including, if applicable, preparation, construction, development, maintenance and abandonment.
- c) The holder shall not conduct any activity on the land where prior rights have been issued without the consent of the holder of these prior rights.
A list of prior and subsisting authorizations and dispositions (prior rights)

issued on the quarter sections included in this authority can be purchased from Alberta Energy, Crown Land Data Support, Telephone: 780-422-1395, or the Alberta Energy Website: <http://www.energy.gov.ab.ca>.

Surface rights plot sheets showing active dispositions, and individual activity plans can be purchased from IHS, Main Floor, Petroleum Plaza, South Tower, 9915 – 108 Street, Edmonton, Alberta, T5K 2G8, Telephone: 780-413-3380, Fax: 780-413-3383 or Website: <http://www.petrosurveys.ca>.

- d) The holder shall contact the registered trapper, if any trapping areas (TPA) have been issued on the quarter sections included in this authority, at least TEN DAYS PRIOR TO COMMENCING ANY ACTIVITY. This must be done by registered mail and we recommend personal communication follow-up. The trapper's name and address may be obtained from Alberta Energy, Crown Land Data Support (Telephone: 780-422-1395). For other information concerning registered traplines, contact the Client and Licensing Service, Environment and Sustainable Resource Development, Edmonton, Alberta (Telephone: 780-427-5185) upon receipt of this approval. The holder may be responsible for any damage to traps, snares or other improvements.
- e) Where applicable, the Regulatory body may, in addition to any other charges, assess a further charge of 50 cents per acre (\$1.24 per hectare) on every acre or part acre in this authority to fund the Trapper's Compensation Program. Classification of lands can be obtained from Alberta Energy, Crown Land Data Support, Telephone: 780-422-1395 or the Alberta Energy Website: <http://www.energy.gov.ab.ca>.
- f) The holder is responsible for obtaining any necessary federal, municipal and other permits and approvals with respect to this authority.
- g) The holder agrees to hold harmless the Regulatory body from any and all third party claims, demands, or actions for which the holder is legally responsible, including those arising out of negligence or willful acts by the holder or the holder's employees or agents. This hold harmless shall survive this Agreement.

- h) The holder shall indemnify and save harmless the Regulatory body from any and all claims, actions, suits, or similar proceedings commenced by any competent regulatory body against the holder or the Regulatory body in connection with the activity or holder's use of the land, including without limitation the local municipality, any other department or agency of the Alberta Government or the Government of Canada.
 - i) The holder shall, at its own expense and without limiting its liabilities herein, insure its operations under a contract of General Liability Insurance, in accordance with the *Alberta Insurance Act*, in an amount not less than \$2,000,000 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss of use thereof. The holder shall provide the Regulatory body with acceptable evidence of all the insured prior to the commencement of the work and shall promptly provide the Regulatory body with a certified true copy of each policy upon request.
 - j) This authority is granted subject to further amendment by the Regulatory body, in its sole discretion.
 - k) The holder shall furnish proof, upon request, that the holder has complied with any and all of the provisions of the holder's disposition in a form and time required by the Regulatory body.
2. 078 The holder shall contact and advise the officer of the Regulatory body of its intentions:
- prior to entry upon the lands, for a stated purpose,
 - prior to any additional construction during the term of this authority,
 - at the completion of operations, and
 - upon abandonment of this activity.
 - AERSurfaceActivityApplication@aer.ca
3. 091 The holder shall not conduct any activity on any of the lands included in this authority between the dates specified unless otherwise approved in writing by the officer of the Regulatory body:

Key Wildlife and Biodiversity Zones North of Highway #1: January 15 to April 30; South of Highway #1, and West of Highway # 2: December 15 to April 30

Mountain Goat and Sheep Zone: August 23-June 30

4. 092 The holder shall conduct operational, construction and maintenance activities outside of the breeding season for the following specified lands (emergency situations exempt):

Within 1000 metres of Sensitive Raptor nests: March 15 to July 15

Within 500 metres of Burrowing Owl nests: April 1 to August 15

Within 500 metres of Swift Fox den: February 15 To July 31

Within 200 metres of a Piping Plover water body: April 15 to July 31

5. 098 Trails are not to exceed the following maximum width: 6 metres.
6. 084 Unless otherwise approved in writing by the officer of the Regulatory body, the holder shall ensure that drill sites shall not exceed **(20) metres x (40) metres.**
7. 998 On sites where mechanical mulching methods are utilized to clear forest cover, the holder shall ensure that fine woody debris (wood chips) is managed as per ***Directive SD 2009-01 Management of Wood Chips on Public Land.***
8. When a new access approaches an existing linear feature, the holder shall construct a line at an appropriate angle (45 degrees), within 200m of the intersection, to eliminate a continuous line of sight, unless otherwise approved in writing by the officer of the Regulatory body.
9. 133 Activities shall not result in the deposition or placement of debris, soil or other deleterious materials into or through any watercourse and/or water body, or on the ice of any watercourse and/or water body.
10. 099 Where materials are available, rollback shall be applied as follows unless alternative methods can be supported by Regulated Industry Standards and are approved by the officer of the Regulatory body:

- a) Place rollback across the entire width for a distance of at least 200 metres from all points of intersection with roads and permanent watercourses.
11. 139 Where crossings have been removed, the bank or shoreline of all affected watercourses and/or water bodies shall be immediately stabilized and/or alterations or modifications to the bank or shoreline shall be restored.
12. 136 All crossings shall maintain fish passage. Crossings shall be compliant with Alberta Environment's Code of Practice under the Water Act, Water (Ministerial) Regulation.
13. Except for approved crossings of watercourses, the holder shall leave a buffer zone of undisturbed vegetation between any proposed activity (edge of clearing) and any watercourse or water body (top of valley escarpment and/or high water mark), unless otherwise approved in writing by the officer of the Regulatory body, according to the following requirements:
- a) Large permanent watercourses shall have a setback of at least 100m
 - b) Small permanent watercourses shall have a setback of at least 45m
 - c) Intermittent watercourses and springs shall have a setback of at least 45m
 - d) Ephemeral watercourses shall have a setback of at least 15m
 - e) Lakes shall have a setback of at least 100m
 - f) Permanent shallow open water ponds shall have a setback of at least 100m
 - g) Semi-permanent ponds/wetlands shall have a setback of at least 100m.
 - h) Non-permanent seasonal wetlands shall have a setback of at least 45m
 - i) Non-permanent temporary wetlands shall have a setback of at least 15m
14. 995 The holder shall utilize the lands only during frozen or dry ground conditions.
15. 087 The holder shall utilize the land only for temporary undeveloped access. If surface disturbance is necessary, or if permanent access is required, the holder shall contact the officer of the Regulatory body regarding routing, salvage and construction requirements.

16. 994 Any activity on the land during adverse ground conditions must be suspended if the activity is likely to cause unacceptable damage to vegetation or soil as may be determined by the holder or the officer of the Regulatory body.
17. 231 The program crosses designated trail(s) in the CNT980012 snowmobile area. When operations encroach on trail(s), the holder shall ensure that:
- Lines crossing trail(s) are constructed in a manner that will not remove snow from the trail(s), produce ruts in the trail(s), or otherwise adversely affect travel.
 - No mechanical equipment is permitted to travel along the trail(s), unless approved in writing by the officer of the Regulatory body.
 - Warning signs are posted along trail(s) advising trail users of the upcoming crossing location.
18. 993 Prior to entry on the land, the holder shall steam clean all equipment, including seeders.
19. 992 The holder shall strip and pile the topsoil separately from any fine woody debris (wood chips) and subsoil in such a manner that it can be distributed evenly over the disturbed area when operations have been completed. Where topsoil is less than 15 centimetres, conservation shall include the topsoil plus part of the upper subsoil up to a total depth of 15 centimetres (unless considering chemically unsuitable).
20. 151 Soil and surface erosion and sedimentation shall be prevented and controlled on all disturbed lands.
21. 991 The holder shall not dispose of drilling waste off lease without a further disposition or letter of authority under Section 20 of the *Public Lands Act*.
22. 160 The holder shall utilize impermeable tanks to collect all liquid effluents and dispose of at an authorized disposal facility.
23. 121 All woody debris and leaning trees must be slashed, limbed and bucked flat to the ground unless otherwise approved by the officer of the Regulatory body. The length of slashed woody debris shall not exceed 2.4 metres.

24. 899 The holder shall cut, keep down and destroy all noxious and restricted weeds and control noxious weeds as per the *Public Lands Act*.
25. 109 When seeding pasture or cultivated lands, the agronomic or forage seed shall meet or exceed Certified #1 as outlined in the *Canada Seeds Act* and Seed Regulations. Seed mixes are to be free of species listed in the *Weed Control Act*. A seed certificate (under the rules and regulation of the *Canada Seeds Act*) for each species shall be provided to the AER, upon request.
26. 162 In addition to complying with Federal, Provincial and local laws and regulations respecting the environment, including release of substances, the holder shall, to the Regulatory body's satisfaction, take necessary precautions to prevent contamination of land, water bodies and the air with particulate and gaseous matter, which, in the opinion of the Regulatory body in its sole discretion, is or may be harmful.
27. 898 Unless otherwise specified by a local officer of the Regulatory body, initial efforts at re-establishing a vegetative cover on disturbed surfaces described in the Activities Plan for this exploration program must be accomplished by:
- a) Seeding using only a native species seed mixture that shall be approved by the departmental officer. The holder shall provide a certificate of seed analysis for each species (Refer to the Native Plan Re-Vegetation Guidelines for Alberta, (2001).
 - b) Seeding an annual non-invasive cover-crop in conjunction with a native species seed mixture that must be approved by the departmental officer. The holder shall provide a certificate of seed analysis for each species upon request (Refer to the Native Plant Re-Vegetation Guidelines for Alberta, (February 2001).
 - c) Allowing the land to re-vegetate through natural processes without seeding.
28. 900 The holder shall provide to the Regulatory body within 60 days of March 31 each year of this program until a reclamation certificate is issued, an Annual Report (submitted electronically to AERSurfaceActivityApplication@aer.ca) indicating;

- a) requirements consistent with Section 7.1.5 of the Code of Practice for Exploration Operations made under the Environmental Protection and Enhancement Act,
 - b) the area of new disturbance cleared and/or utilized as approved under this program,
 - c) any sites added to the program including the authorization issued by the Regulator,
 - d) the total area of lands within the program intensively used (disturbed),
 - e) a listing of all core hole sites or accesses converted to disposition under the *Public Lands Act*,
 - f) the total area of lands within the program cleared but not explored to date and intent for completion, and
 - g) any other pertinent information relevant to this program.
29. 902 Upon completion of the exploration programs on public lands, charges for timber damage, if applicable, will be assessed in accordance with the current schedule (Timber Damage Assessment Table).
30. 235 The holder shall complete reclamation, including line and site clean-up, soil stabilization and wood debris handling progressively and concurrently with operations.
31. 903 The authorization, when issued, will be for a term as indicated effective from the date of this authority.
32. 1200 The Disposition Holder must manage all weeds as per the *Weed Control Act*.
33. 1040 Under section 54.01 of the Public Lands Act this access Disposition is closed.

The Disposition Holder must install access control* that restricts unauthorized access.

The access control* identified below must be effective, maintained, and monitored.

Access control* may include one or more of the following:

- earthen berm* (not to be used within native grassland*) permanent or temporary removal of water crossing structures
- barricades
- locked gates
- manned checkpoints
- pre-existing access control*

Where effective access control* already exist, additional access control* is not required. If a pre-existing access control* is selected, it must effectively restrict unauthorized access to the new road. The applicant* must ensure all access occurs through the pre-existing access control, and success of access management is subject to the pre-existing access control as a term or condition of this Disposition.

34. 1041 Where access control* is required, the Disposition Holder must erect a sign at the access entry point where the sign:

- Is a minimum size of 1 metre x 1 metre,
- Has a white reflective background with a checkered border.
- Text is a minimum of 5 centimetres (2 in.) displayed in black lettering,
- Displays the Company name or logo on the bottom right hand corner,
- Is located at a visible spot next to the access at least 1.5 metres off the ground and must not be obscured by plowed snow or vegetation.

35. 1042 Where access control* is required, the Disposition Holder must erect a sign with the identified text;

NOTICE:

Under the authority of the section 54.01 of the Public Lands Act this road is closed beyond this point for the purpose of:

<Disposition Holder to Identify Purpose>

Unauthorized on-highway motor vehicles are prohibited. Operators of unauthorized vehicles beyond this point may be found guilty of an offence.

WARNING: GATE MAY BE LOCKED WITHOUT NOTICE.

NOTE: Contact information is provided for those eligible for use of this access.

In case of an emergency call: 1- <Disp Holder to provide #>

Company contact information

Commercial Users may contact the Disposition Holder at: 1-<Disp Holder to provide #>

For general inquiries please call: 1-<Disp Holder to provide #>

Company contact information

<Company Phone Number>

LOC or DLO # <_____>

36. 1941 From December 16th to July 31st, the Disposition Holder must not conduct activities on Fescue Grasslands* in the Montane, Foothills Parkland and Foothills Fescue Natural subregions.

37. 1944 On native grasslands*, the Disposition Holder must not crimp straw* subject to the following exceptions:

- The straw* used for crimping must be sourced from a native species* from the same ecological range site* as the Lands;
- The weed analysis for the straw* used for crimping must comply with the Weed Control Act, as amended or replaced from time to time.

38. 1949 In native grasslands* as identified by the Subalpine and Alpine* Subregion Layer of the Landscape Analysis Tool that requires Assisted Natural Recovery*, the Disposition Holder must submit a request for Assisted Natural Recovery in writing to the Regulatory Body that contains all of the following:

Rationale for conducting Assisted Natural Recovery*;

- A description of the proposed site for Assisted Natural Recovery* including information with respect to the following:
- Whether the Lands are subject to high erosion*;
- Whether the soil on the Lands has been disturbed to an area greater than 50m²;
- Whether the Lands are prone to invasion from agronomic or weed species;
- A proposed seed mix composition for re-vegetation of the Lands:
- That is consistent with native plant communities that are adjacent* to and in the immediate vicinity of the Lands as determined by the Range Plant Community Type and Carrying Capacity for the Subalpine and Alpine* Subregions of Alberta, as amended or replaced from time to time;
- Provide a seed certificate in accordance with the Seed Act for the seed mix to be used for Assisted Natural Recovery*; and
- Any other information requested by the Regulatory Body.

39. 1950 In native grasslands* as identified by the Montane Subregion Layer of the Landscape Analysis Tool that requires Assisted Natural Recovery*, the Disposition Holder must submit a request for Assisted Natural Recovery in writing to the Regulatory Body that contains all of the following:

- Rationale for conducting Assisted Natural Recovery*;
- A description of the proposed site for Assisted Natural Recovery* including information with respect to the following:
- Whether the Lands are subject to high erosion*;
- Whether the soil on the Lands has been disturbed to an area greater than 50m²;
- Whether the Lands are prone to invasion from agronomic or weed species;
- A proposed seed mix composition for re-vegetation of the Lands:
- That is consistent with native plant communities that are adjacent* to and in the immediate vicinity of the Lands as determined by the Range Plant Community Type and Carrying Capacity for the Montane Subregions of Alberta, as amended or replaced from time to time;
- Provide a seed certificate in accordance with the Seed Act for the seed mix to be used for Assisted Natural Recovery*; and
- Any other information requested by the Regulatory Body.

Term: 5 Years

Two years for operation with an expiry on July 27, 2022

Three years for reclamation with an expiry on July 27, 2025

Appendix I

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

1. Reporting the discovery of historic resources

Pursuant to Section 31 of the *Historical Resources Act*, should any archaeological, paleontological, historic period resources or Aboriginal traditional use sites of a type described below be discovered during the conduct of activities associated with the program, staff of the Heritage Division of Alberta Culture (Telephone: 780 431-2300) are to be contacted immediately. It may then be necessary for the Heritage Division to issue further instructions regarding the documentation of these resources.

2. Post development impact assessment audits

Pursuant to Section 37(2), of the *Historical Resources Act*, the Heritage Division of Alberta Culture may require a post development impact assessment audit in the spring and/or summer of the following year and annually until the program is closed.

3. Aboriginal traditional use sites that Alberta Culture consider as historic resources under the *Historical Resources Act*

Aboriginal traditional use sites that are considered by Alberta Culture to be historic resources under the *Historical Resources Act* include but may not be limited to the following:

- historic cabins remains
- cabins (unoccupied)
- ceremonial plant or mineral gathering sites
- ceremonial sites/spiritual sites
- cultural or community camp sites
- gravesites
- historic settlement(s)/Homestead(s)
- historic sites
- oral history sites
- trails
- wickiup/sweat lodge sites

This listing updates the list on pages 5 and 6 of *Tourism, Parks, Recreation and Culture Guidelines for First Nations Consultation on Resource Development and Land Management* (referred to as the ACCS Consultation Guidelines), Part V of Alberta's *First Nations Consultation Guidelines on Land Management and Resource Development*, dated November 14, 2007.

Appendix II

inquiries 1-855-297-8311
24-hour
emergency 1-800-222-6514

All water use must be in compliance with the *Water Act*. Online applications for the temporary diversion of water (TDL) can be submitted to the Alberta Energy Regulator (AER) through WATERS, which can be accessed at <http://www.aer.ca/> (click System & Tools).

Unless exempt under the *Water (Ministerial) Regulation*, the holder shall comply with the *Code of Practice for Watercourse Crossings* under the *Water Act*.

For additional information on the *Water Act* and water management please visit the AER at: <http://www.aer.ca/applications-and-notice> or contact the AER Customer Contact Centre: Inquiries@AER.ca or 1-855-297-8311.

A New Coal Policy for Alberta in the Age of Net Zero: Questions of Implementation

A Submission by Nigel Bankes to the Alberta Coal Policy Committee

A New Coal Policy

Alberta needs a new coal policy. The 1976 Coal Policy is flawed by ambiguity and outdated. The current reinstatement of the 1976 Policy is a band aid solution.

The main elements of a new policy must be premised on the following:

- Net zero CO₂ emissions by 2050 ([IEA, 2021](#))
- Watershed protection and ecosystem function as the highest priority for land use in the eastern slopes (see submission from Rainer Knopff, Harvey Locke, Ted Morton and Kevin Van Tighem)
- Ensuring an effective private liability regime for reclamation and abandonment of existing mines including selenium management (see Drew Yewchuk's submission)

With these premises I anticipate that a new coal policy will, *inter alia*

- Prohibit all new surface coal mines (thermal or metallurgical) and expansions of existing mines in the eastern slopes, whatever the existing 1976 coal policy category.
- Prohibit all new thermal coal mines and expansion of existing thermal coal mines anywhere within the province.
- Subject any proposed underground metallurgical coal mine (if any) to the selenium standards to be established in the proposed federal Coal Mining Effluent Regulations (i.e. no grandparenting, see Yewchuk) and to a rigorous analysis to assess market demand, the economic life of any project and abandonment and reclamation liabilities.

Questions of Implementation

For the purpose of my remarks, I propose to take all of these elements (or some version of them) as 'givens' because I want to focus on how we might implement a new coal policy. I discuss three main points: (1) why any new coal policy should be legally binding; (2) the options for making a new coal policy legally binding; and (3) potential issues of compensation.

Legally binding. It is important that the terms of the new coal policy should be clear and avoid ambiguity (such as the ambiguities associated with the current category 2 lands) and the policy itself should be legally binding on all relevant parties. Relevant parties would include the Minister of Energy and the Department, the Alberta Energy Regulator; parties who hold agreements under the *Mines and Minerals Act*; and *owners of private coal rights and their lessees*. The main reasons for considering that a new coal policy should be legally binding are: (1) to provide clarity to all concerned as to the status of the policy (it is sometimes too easy to dismiss something that is "just a policy"), and also (2) to avoid the scenario that evolved just over a year ago when Minister Savage, without any warning or consultation, simply purported to revoke an all-of-government policy (the 1976 Coal Policy) by means of a press release and the issuance of a Departmental Information Letter. Any proposal to change a coal policy that is

legally binding will require more public discussion and likely a debate in the legislative assembly.

Models for making a new coal policy legal binding. There are perhaps two main models available to make a new coal policy legally binding: (1) by incorporating the terms of the coal policy in relevant approved land use plans under the *Alberta Land Stewardship Act*, or (2) a stand-alone statute (eg a *Coal Policy Implementation Act*, or an *Eastern Slopes (Coal) Protection Act*) that accords legal effect to the entire coal policy or the most significant parts thereof. As between these two options I strongly favour the second options for a number of reasons.

- 1. The track record of the land stewardship planning process to date.** The track record of the land stewardship planning process to date suggests that it has proven very difficult, for whatever reason(s), to directly incorporate the provisions of the 1976 Coal Policy into relevant regional land use plans. While the South Saskatchewan Regional Plan contains some tangential references to the 1976 Policy there was still considerable ambiguity as to the legal effect of those references. Much the same is also true of the sub-regional planning processes within the region such as the Livingstone-Porcupine Hills Land Footprint Management Plan (2018). This Plan develops important management thresholds in the form of disturbance limits on motorized access and spatial human footprint targets (at 8 – 11) but when it comes to the coal policy, it too passes the buck (at 23):

As part of reviewing and incorporating the Integrated Resource Plans, the Government of Alberta will integrate a review of the coal categories for the South Saskatchewan Region (SSRP p. 61). New direction, consistent with footprint planning outcomes, will supersede the coal categories and may extend to all large-scale industrial surface disturbances, including coal. This new direction should be consistent with an integrated approach. It will specify where surface exploration and development can and cannot occur based on the best and most recent biodiversity sensitivity data.

And for more discussion see “Coal Law and Policy in Alberta, Part Three: Was the Public Rationale for Rescinding the Coal Policy Ever Convincing?” (February 15, 2021), online: ABlawg, http://ablawg.ca/wp-content/uploads/2021/02/Blog_NB_Coal_Policy_Part3.pdf

- 2. Land use planning under ALSA is a lengthy process.** Land use planning under *ALSA* is a lengthy process. There are good reasons why land use planning should take a long time. There are studies to be undertaken and a broad range of interests to be considered in the development of any new plan or the amendment of an existing plan. In the 12 years since the adoption of *ALSA* we have only been able to finalize two regional plans and in recent years the planning process simply seems to have stalled. We need to address the future of coal mining on the eastern slopes and throughout the province within a short time frame. We cannot afford to wait for legal effect to be accorded a new coal policy.
- 3. The eastern slopes of the Rockies engage multiple planning regions.** The eastern slopes of the Rockies engage multiple land use planning regions. This ties in to the last point. Currently, lands within Categories 2 and 3 are included within no less than five of

Alberta's seven planning regions, Upper Peace, Upper Athabasca, North Saskatchewan, Red Deer, and South Saskatchewan. We only have a complete plan for the South Saskatchewan Region and even in that case we must conclude that the Plan does not an inadequate job of incorporating even the existing 1976 Coal Policy let alone a new coal policy. At the current rate it will take decades to complete the remaining plans.

4. **Not all parts of approved ALSA plans are legally binding.** Not all parts of approved ALSA plans are legally binding - only those parts designated by Order in Council, see ALSA s 13(2.1). Albertans will want to see a public debate in the legislature as to the elements of a new coal policy that are to have legal effect.
5. **ALSA provides too many opportunities to delay implementation.** ALSA provides too many opportunities to delay implementation of an approved plan. These provisions include opportunities to seek a variance (s 15), or a review of a newly adopted Plan (s 19.2) as well as exceptionally complex compensation provisions (ss 19 – 19.1). While these procedural safeguards may be necessary in some cases, they are not suited to something like a coal policy.

Issues of compensation. It will be important to implement a new coal policy in a way that minimizes the potential liability of the province to claims for compensation (under domestic law or international investment law) and at the same time maintains Alberta's reputation as a safe place to invest. After all, Alberta will still need to attract investment to support the energy transition which is an essential part of the province's future.

Alberta already has in place the Mineral Rights Compensation Regulation, Alta Reg 317/2003, which provides compensation to the holders of Crown agreements where those agreements are cancelled when the Minister of Energy forms the opinion "that any or any further exploration for or development of the mineral to which the agreement relates within that location or part of it is not in the public interest." But some assessment needs to be made as to whether the approach taken in that regulation is fit for present purposes. We should be fair to investors, but we should also be careful not to over-compensate. Investors take risks. They take risks that government policies will change; they take the risk that their projects may never be approved; and all investors in carbon resources understand at a global level that we need to reduce our carbon footprint.

We also need to consider what approach should be taken with respect to privately owned coal lands which may be affected by the adoption of a new coal policy.

Issues of compensation could also be addressed in any legislation designed to implement a new coal policy.

Nigel Bankes, Emeritus Professor of Law, The University of Calgary, ndbankes@ucalgary.ca

July 18, 2021